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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91161817
<b>Party</b>	Plaintiff Nextel Communications, Inc. ,
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<b>Submission</b>	Motion for Summary Judgment
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<b>Date</b>	11/11/2005
<b>Attachments</b>	Opposer's Motion for Summary Judgment and for Suspension of Proceedings.pdf ( 24 pages ) Opp Ex 1.pdf ( 7 pages ) Opp Ex 2.pdf ( 7 pages ) Opp Ex 3.pdf ( 23 pages ) Opp Ex 4.pdf ( 39 pages ) Opp Ex 5.pdf ( 3 pages ) Opp Ex 6.pdf ( 16 pages ) Opp Ex 10.pdf ( 8 pages ) Opp Ex 11.pdf ( 95 pages )

NEXTEL COMMUNICATIONS, INC., )  
)  
Opposer, )  
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v. )  
)  
MOTOROLA, INC., )  
)  
Applicant. )  
\_\_\_\_\_ )

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**OPPOSER’S MOTION FOR SUMMARY JUDGMENT  
AND FOR SUSPENSION OF PROCEEDINGS**

“Wishing does not make a trademark or service mark be.”<sup>1</sup> Applicant Motorola, Inc. (“Motorola”) has failed to satisfy the most fundamental requirement for obtaining a trademark registration, as it has never used the sound that is the subject of this application as a trademark. Opposer Nextel Communications, Inc. (“Sprint Nextel”),<sup>2</sup> pursuant to Fed. R. Civ. P. 56(c), respectfully requests a summary judgment that Motorola has not established trademark rights in the subject matter of its underlying application and that the application be dismissed. Sprint Nextel further requests that the Board (1) reject Motorola’s unfounded affirmative defense of laches and/or acquiescence and (2) suspend the proceedings in accordance with Trademark Rule 2.127(d) and TBMP § 528.03.

**I. Introduction**

The world is full of equipment and machines that make meaningful sounds. Car horns honk, answering machines beep, and doorbells ring. By and large, however, car manufacturers have not sought to establish trademark rights in their horns, answering machine companies do not assert trademarks on their beeps, and doorbell manufacturers do not claim exclusive trademark rights in “ding dong.”

Two-way radios – those made by Motorola as well as radios made by others – all have “alert” tones that tell the user when certain operational features have been activated. The user hears the signal and knows the particular radio function is working. Virtually every radio

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<sup>1</sup> *In re Morganroth*, 208 U.S.P.Q. (BNA) 284, 287 (TTAB 1980).

<sup>2</sup> Nextel Communications, Inc. merged with Sprint Corporation on August 12, 2005, and the new entity is known as Sprint Nextel Corporation. We will refer to Opposer as “Sprint Nextel.” A motion for joinder or to substitute parties will be filed as appropriate.



manufactured by any manufacturer relies on such audible tones and signals in its operation.

Motorola began manufacturing radios of the type at issue in this proceeding, capable of emitting a wide variety of alert signals, in 1983 or 1984. Over the intervening years, Motorola did not claim trademark rights in those various signals.

On April 9, 2003, however, Motorola filed this application, seeking to register an electronic tone played at a certain cadence at a frequency of 911 Hz.<sup>3</sup> In its application, Motorola alleges that it has used this tone in commerce since 1991. However, and as set forth in more detail below, Motorola has not adduced a single piece of evidence sufficient to support its allegation as a matter of law. The facts are beyond dispute: Motorola has never used the 911 Hz Tone as a trademark. In the absence of any evidence of use, the 911 Hz Tone is not entitled to registration.

As a separate matter, Motorola's sole affirmative defense is an unsustainable argument that Sprint Nextel's opposition is barred due to laches and/or estoppel by acquiescence. This affirmative defense also fails as a matter of law.

## **II. Undisputed Facts**

### **A. Relationship Between the Parties**

1. Sprint Nextel is one of the largest providers of cellular telephone services in the United States. *See* Ex. 1, Notice of Opposition, at ¶ 1; Ex. 2, Answer at ¶ 1.

2. Motorola and Sprint Nextel's predecessor entity, Nextel Communications, Inc., have a long-standing business relationship, pursuant to which Motorola manufactures wireless

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<sup>3</sup> Essentially simultaneously, Motorola filed a second application, seeking registration of a separate tone that is used by Sprint Nextel in advertising its own telecommunications and wireless walkie-talkie services, and which is the subject of a separate opposition proceeding, Opp. No. 91/164,353.

phones with walkie-talkie capabilities that are sold to Sprint Nextel for resale to Sprint Nextel's cellular service customers. *See* Ex. 1, Notice of Opposition, at ¶ 2; Ex. 2, Answer, at ¶ 2.

3. The Motorola goods at issue in this matter are two-way radios, which Motorola sells to public safety agencies, such as police, fire and EMT agencies. *See* Ex. 3, 911 Hz Tone App. File Wrapper. The Motorola two-way radios are branded with the "Motorola" name and Motorola's "batwing" mark. *See* Ex. 4, Klein Depo. Excerpt, at 45-46. Sprint Nextel's walkie-talkie phones are also marketed to and sold to public safety agencies. *See* Ex. 5, Sprint Nextel Website Printout. Sprint Nextel's walkie-talkie phones compete directly with Motorola's two-way radios in that market. *See* Ex. 5, Sprint Nextel Website Printout.

**B. Procedural History**

4. On April 9, 2003, Motorola filed an application for registration of an electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on (the "911 Hz Tone") in connection with "[t]wo-way radios" (the "911 Hz Tone Application"). Ex. 3, 911 Hz Tone App. File Wrapper.

5. The 911 Hz Tone Application was filed under Section 1(a) of the Lanham Act and claimed May 6, 1991, as the date of first use and the date of first use in commerce. *See* Ex. 3, 911 Hz Tone App. File Wrapper.

6. On October 17, 2003, Motorola submitted a response to an Office Action requiring a specimen evidencing use of the 911 Hz Tone in commerce. Motorola's response provided a specimen of use in the form of a compact disc that Motorola described as "[a] sound file that contains a sound that emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak." Ex. 3, 911 Hz Tone App. File Wrapper.

**C. Motorola's Alleged "Use" of the 911 Hz Tone**

7. In response to Sprint Nextel's Interrogatory No. 6, which requested Motorola to describe in detail the manner in which it purports to use or to have used the 911 Hz Tone in commerce, Motorola stated as follows:

Applicant has used the 911 Hz Tone in commerce by, among other things, offering to sell and selling two-way radios and cellular telephones that contain the chip referred to above (*see* Response to No. 5) and from which the [911 Hz] Tone can be heard.

Ex. 6, Motorola's Responses to Sprint Nextel's First Set of Interrogatories ("Motorola Interrog. Resp."), at No. 6. Motorola's response to Interrogatory No. 5, which had asked for a detailed description of the way in which the 911 Hz Tone was affixed to any goods, was that the 911 Hz Tone was affixed "through an electronic chip resident in the device and from which the sound originates and emanates." Ex. 6, Motorola Interrog. Resp., at No. 5.

8. The 911 Hz Tone was created by Motorola engineers when the radios were first developed in 1983 or 1984, and the parameters of its cadence and frequency were predetermined by the interval at which the radios' communications protocol permitted pulses and the frequency on which their single frequency generator operated. *See* Ex. 4, Klein Depo. Excerpt, at 58-60. The 911 Hz Tone, like the numerous other signal tones emitted by the Motorola radios, was formed simply by using integral multiples of the given cadence and frequency. *See id.*

9. Radios manufactured by other companies also emit various sound signals, *see id.* at 92, but for the first twenty years it manufactured its two-way radios, Motorola had never undertaken any investigation to determine whether other radios use the same 911 Hz Tone. *See id.* at 92-94.<sup>4</sup>

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<sup>4</sup> In August 2005, Motorola hired an expert witness, Dr. Michael Rappeport, to conduct a survey and prepare a report regarding the tone, a copy of which is attached as Exhibit 5. Among the

10. The 911 Hz Tone, like other two-way radio signal tones, serves a specific function. That function is to signify the activation of one of the operations of the radios in which the tone-generating chip is embedded. As stated by Motorola in its description of the specimen it provided in response to the Office Action regarding its application, the 911 Hz Tone “emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak.” Ex. 3, 911 Hz Tone App. File Wrapper.

11. Motorola’s Rule 30(b)(6) witness confirmed that the 911 Hz Tone signifies that “either the channel[’]s available for communication or that the microphone is active and transmitting.” Ex. 4, Klein Depo. Excerpt, at 44-45. The tone notifies the user of the activation of what is referred to as the “Talk-Permit” or “Call-Back” function of the device. *See id.* at 49-50. The 911 Hz Tone is one of a dozen or more different audible tones emanating from the two-way radios, each signifying the activation of a different operation or feature of the radio. *See id.* at 50, 62-63; *see, e.g.*, Ex. 7, XTST<sup>™</sup> 300 Astro User Manual, at MOT 002215-2217; Ex. 8, MTX-800<sup>™</sup> Privacy Plus<sup>®</sup> User Manual, at MOT 000269; Ex 9, STX<sup>®</sup> 800/821 SmartNet<sup>™</sup> User Manual, at MOT 000321-322.

12. The 911 Hz Tone and the other tones emitted by Motorola’s two-way radios have been kept consistent over successive generations of two-way radio products because the consistency makes it possible for users (public safety, police and fire officials) to recognize the activation of the same operational feature without being retrained. *See* Ex. 4, Klein Depo. Excerpt, at 42-43. As Motorola’s 30(b)(6) witness explained, using the same tone to signify the same feature in different products “allows [customers] to understand what’s happening without

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responses were a number that identified the tone as coming from a two-way radio, but identified the radio as manufactured by a company or companies other than Motorola. *See* Ex. 11, Rappeport Survey Report, at MOT 004685-86.

them interacting.” *Id.* at 43. This permits what Motorola refers to internally as “Hands on, eyes off” operation of the products by users. *Id.* at 42.

13. Other two-way radios, manufactured by Motorola’s competitors such as Macom and Kenwood, also emit a number of different tones to denote the operation of different features. *See id.* at 93-95. Motorola’s 30(b)(6) witness, when asked whether competitors’ products also emitted a “Talk-Permit” or “Call-Back” tone, stated that “[i]t would be my assumption that those products would require some type of indication to notify the user that . . . either the channel is available or the mike is active.” Ex. 4, Klein Depo. Excerpt, at 92 (emphasis added).

14. Motorola’s witness asserted that when the tone is heard by a user, that user would know the product is a Motorola product because the product also is marked with “the Motorola label, the trademarks, the bat wing emblem, things like that.” *Id.* at 45-46. But he also testified that at least one other company, a product integrator, sells Motorola-manufactured radios that emit the 911 Hz Tone, and those radios feature the brands of the other company. *Id.* at 47-48.

15. Even in marketing contexts such as trade shows, the 911 Hz Tone is heard only in connection with its functional purpose. Motorola’s witness explained that:

The Talk-Permit tone from its inception has always indicated that when you hear this tone, you are being told that either there is a channel available for you now, or that the channel has been – you know, essentially you have the channel. The microphone is active. You can now speak.

*Id.* at 103. When asked “are there times . . . when the tone is heard and that’s not the case?,” the witness replied “No. The tone is specific to – the sound is specific to those events.” *Id.* at 103-04 (emphasis added). Motorola does not feature or use the 911 Hz Tone in any other way:

Q. Now, at any of those trade shows, are you aware of any instance in which Motorola featured the 911 Hz Tone other than in connection with operation of the function that it signifies?

A. I'm not aware of any other – any other presentation of that tone.

*Id.* at 123.

16. Motorola's witness reconfirmed this point in testifying about other situations in which the 911 Hz Tone might be heard, in the context of a demonstration by a sales representative at a customer's facility, as follows:

Q. And in that context as well, is it the case that when you hear the tone, it's because the channel open function is working?

A. Again, the tone has always been in reference to either the call-back availability or of the microphone active and communications occurring.

*Id.* at 104-05 (emphasis added).

17. Motorola does not run any audiovisual advertising for 911 Hz Tone Products in which the 911 Hz Tone is heard. *Id.* at 117. Motorola's 30(b)(6) witness was unaware of any print advertising that specifically identifies the 911 Hz Tone. *Id.* at 107-08. User manuals and training materials provided to customers describe the various tones emitted by the two-way radios in a variety of ways, all within the context of explaining the functions and features of the products. The 911 Hz Tone is not identified as such, but the same tone is described variously as "a Group of Medium-Pitched Tones," a high pitched "dih-dih-dit" tone, and/or "3 short, high pitched tones ('*di-di-dit*')," in user manuals for various 911 Hz Tone Products. *Id.* at 62-70; Ex. 7, XTS™ 3000 Astro User Manual, at MOT 002217; Ex. 8, MTX-800™ Privacy Plus® User Manual, at MOT 000269; Ex. 9, STX® 800/821 SmartNet™ User Manual, at MOT 000321.

18. In all, Motorola identified a total of five circumstances in which a potential customer might actually hear the 911 Hz Tone: (i) when being trained in the use of the product, (ii) when attending a trade show, (iii) when viewing a sales representative's demonstration, (iv) when using the product after purchase, or (v) when hearing someone else using the product. *See*

Ex. 4, Klein Depo. Excerpt, at 45, 117-120. In each of those circumstances, as Motorola's witness confirmed, the 911 Hz Tone specifically and exclusively denotes the activation of the "Talk-Permit" or "Call-Back" feature of the product. *Id.* at 110 (training); 103-04, 123 (trade shows); 104-05 (sales demo); 42-43 (use of product); 119 (others' use in the field).

19. Motorola admitted in April 2005 that it had conducted no surveys regarding the 911 Hz Tone or any products that feature the 911 Hz Tone. *See* Ex. 10, Motorola's Response to Sprint Nextel's First Request for Documents and Things ("Motorola Resp. to Doc. Req."), at Nos. 4, 5.

20. On September 14, 2005, after the close of discovery in this proceeding, Dr. Rappeport completed, on behalf of Motorola, a "Study of the 'Chirp' Sound" (the "Study") that purported to survey whether the 911 Hz Tone "has in fact acquired source indicating distinctiveness." Ex. 11, Rappeport Survey Report, at MOT 004677.

21. The Study involves administration of live interviews with 180 employees or volunteers at police stations and fire departments, in which the interviewee was played several sounds, including the 911 Hz Tone, on a CD or cassette tape player, and then was asked a series of questions. *See id.* at MOT 004681-83.

22. Immediately after the interviewee heard each sound played, he or she was asked the following questions:

1. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so. [RECORD VERBATIM RESPONSE.] Is there anything else?

2. [IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:] You said that the sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company

who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Id.* at MOT 004681, 004690-93.

23. Dr. Rappeport reported that, after discarding 16 interviews collected by one interviewer that could not be validated, leaving 164 interviews, the following percentages of respondents identified the following companies in the aggregate in response to either Question 1 or Question 2 :

Motorola Only	14%
Nextel Only	29%
Motorola and Nextel	9%

*Id.* at 004685. After further eliminating responses he considered to reflect “guessing,” he reported that the following percentages had both identified the respective companies and also identified a radio or walkie-talkie as the device with which the sound was associated:

Motorola Only	11%
Nextel Only	24%
Motorola and Nextel	7%

*Id.* at 004686.

24. Motorola admitted that it has never licensed the 911 Hz Tone to anyone. *See* Ex. 6, Motorola Interrog. Resp., at Nos. 17, 20.

25. Motorola admitted that it does not police third-party uses of the 911 Hz Tone, nor has it attempted to enforce any rights in the 911 Hz Tone against any third party. *See* Ex. 10, Motorola Resp. to Doc. Req., at No. 6.

26. Motorola admitted that it is not aware of any current or prior third-party use of the 911 Hz Tone. *See* Ex. 6, Motorola Interrog. Resp., at No. 17.



### **III. Argument**

A mere operational feature of a product cannot be entitled to trademark protection, unless it is also used as, and functions as, a mark. *See* 15 U.S.C. §§ 1052, 1127. Here, the asserted mark is simply an operational signal tone emitted by a two-way radio. The 911 Hz Tone has not been used as a mark, and, therefore, the most fundamental prerequisite for registration cannot be met.

Unlike a visual mark or label affixed to a product, which can create a lasting impression that serves to identify the product's source, sounds that merely indicate the operation of a product's various features cannot, without more, serve as a mark. Automobile manufacturers program recognizably different tones into their products, such as a "fasten seatbelt" chime and a "blinker on" sound. An elevator may "ding" when the door is ready to open and "beep" as it passes each floor. But the sounds function as signals, not as trademarks. Unless the manufacturer takes steps to create a separate commercial impression for one of those sounds, by which it becomes associated with the product's source rather than just with the operation of the particular function it denotes, the sound itself cannot be found to have been used as a mark.

In this case, it is indisputable that the 911 Hz Tone has not been used as a mark.

#### **A. As Used by Motorola, the 911 Hz Tone Does Not Function As a Trademark**

##### **1. A Trademark Must Identify and Distinguish the Source of the Goods**

The Lanham Act defines a trademark as

any word, name, symbol, or device . . . (1) used by a person . . . to identify and distinguish his or her goods . . . from those manufactured or sold by others and to indicate the source of the goods

15 U.S.C. § 1127 (emphasis added). Thus, even if a “word, name, symbol, device, or a combination of words” is actually used in connection with goods, “it is not registrable unless it is used as a mark.” *In re Morganroth*, 208 U.S.P.Q. (BNA) 284, 287 (TTAB 1980).

The Board’s decisions have enforced this distinction between using a word, symbol, or device in connection with a good or service and actually using it as a mark. For example, in *Morganroth*, the phrase “NATUR-ALL-IZE YOUR HAIR COLORING” had been used by applicant in advertisements for its services. The Board held that it was unregistrable, however, because the phrase was not so prominent, among all the various material included in the ads, that it was likely to create a significant impression on the reader. *Id.* at 288. The phrase conveyed an advertising message about the service rather than serving, “per se, as a service mark to identify and distinguish applicant’s services in commerce.” *Id.*<sup>5</sup>

For similar reasons, the Board refused registration of one of a series of unique rating symbols in *In re Moody’s Investors Serv., Inc.*, 13 U.S.P.Q.2d (BNA) 2043 (TTAB 1989). The applicant had sought registration of “Aaa” as a “service mark for providing ratings of fixed interest rate obligations.” *Id.* at 2044. The applicant had provided ratings using “Aaa” and eight other symbols since 1909, and it was the only company to use those symbols. *Id.* at 2046. Its application was rejected by the Examining Attorney, however, because the specimens did “not

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<sup>5</sup> Motorola has used this same distinction to its advantage, defeating a challenge to its adoption of “Intelligence Everywhere” as a trademark for Motorola products in *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 343 (4th Cir. 2001). Plaintiff MicroStrategy had previously and repeatedly used the phrase “Intelligence Everywhere” to characterize its “mission” in providing its own products to customers, but the Fourth Circuit found that such uses had been part of the company’s advertising message about its goods rather than an identification of the source of the goods. *Id.* at 342. The Court, citing *Morganroth*, concluded that MicroStrategy had not “clearly demonstrated that it has, in fact, used the phrase as a mark,” and affirmed the denial of a preliminary injunction against Motorola. *Id.* at 343.

show use of the designation ‘Aaa’ as a mark identifying applicant’s service.” *Id.* at 2048. The Board affirmed, holding that:

[I]t appears to us that applicant’s various rating symbols, including the designation “Aaa,” are used in the specimens of record to identify and distinguish not applicant’s rating services, but rather the ratings themselves, and that they would be so perceived by the public. That is, the significance of the symbols, as they are used in the specimens, is that of rating symbols (i.e., indications of applicant’s opinion of the investment quality of debt instruments), not service marks. While it is not inconceivable that a particular designation could be used, and therefore function, both as a rating symbol and as a trademark or service mark, applicant’s designation “Aaa” is not so used in the specimens of record.

*Id.* at 2048-49. As in *Morganroth*, the fact that a designation could be used as a mark was insufficient to support its registration where the applicant had not proved that it was used as a mark.

Whether a designation for which registration is being sought has actually been used as a mark is to be determined in the first instance by examining the specimens of record in the application. *Id.* at 2047 (citing *In re Bose Corp.*, 546 F.2d 893, [192 U.S.P.Q. (BNA) 213] (CCPA 1976), and *In re Scientific Methods, Inc.*, 201 U.S.P.Q. (BNA) 917 (TTAB 1979)). Unless the specimen, or other evidence adduced in support of an application, shows that the applicant has used a “‘constant pattern’ or design to highlight” the particular word, symbol, or device sought to be registered in contrast with other such designations used in connection with the good or service, the particular designation cannot be found to have been used as a trademark. *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 342 (4th Cir. 2001) (emphasis added). The Board refused registration, for example, for a background design that always appeared in conjunction with a company’s registered marks, where there was no evidence that the applicant had “called attention” to the design per se “or otherwise ha[d] promoted this background design

in a way that would set the design apart” from the marks with which it appeared. *In re Benetton Group S.p.A.*, 48 U.S.P.Q.2d (BNA) 1214, 1216-17 (TTAB 1998). Where an applicant promotes an aspect of its product “simply as one more feature of its [goods]” rather than as an indication of origin, registration is not permissible. *In re Upper Deck Co.*, 59 U.S.P.Q.2d (BNA) 1688, 1692-93 (TTAB 2001).

As the Board has stated, “[i]t is settled that when a designation or slogan imparts an impression of conveying advertising or promotional information rather than of distinguishing or identifying the source of goods or services, it cannot be the basis for registration.” *In re Niagara Frontier Services, Inc.*, 221 U.S.P.Q. (BNA) 284, 285-86 (TTAB 1983). When, as here, the asserted mark does not even impart promotional information, but, as both Motorola’s evidence and its specimen make clear, the asserted mark is used instead only to convey information about the functional status of a particular operational feature of the product, registration cannot be issued.

**2. Mere Emanation of the 911 Hz Tone from Motorola’s Two-Way Radios During Operation Does Not Constitute Use as a Trademark**

In order to be registered, the 911 Hz Tone must be shown to have been used by Motorola (1) to identify and distinguish its goods from those of others, not merely to distinguish different features of its own product, and (2) to indicate the source of those goods. The undisputed facts demonstrate that Motorola has failed to meet this most fundamental statutory prerequisite. The 911 Hz Tone is used to provide information to the user regarding the operation of the goods, not as a trademark. The 911 Hz Tone is one of more than a dozen electronically generated tones that Motorola’s engineers programmed into the radios to distinguish and differentiate among their different operational functions. Exhibit 12, which is an excerpt from a 52-page User Manual for one of Motorola’s 911 Hz Tone Products, vividly depicts the number and respective meanings of

the many tones emanating from the goods.<sup>6</sup> Motorola cannot now, more than 20 years after first manufacturing the product, arbitrarily choose one of those tones and claim it as a trademark. As the Board noted in *Morganroth*, the trademark use requirement

clearly does not contemplate that the public will be required or expected to browse through a group of words, or scan an entire page in order to decide that a particular word, separated from its context, may or may not be intended, or may or may not serve to identify the product . . . [A trademark] must be used in such a manner that its nature and function are readily apparent and recognizable without extended analysis. . .

208 U.S.P.Q. (BNA) at 288, *quoting National Geographic Society*, 83 U.S.P.Q. (BNA) 260, 260-61 (Comr. 1941); *see also In re Whataburger Sys., Inc.*, 209 U.S.P.Q. (BNA) 429, 430 (TTAB 1980) (designation may not be registered unless it is used “in such a manner that its function as an indication of origin may be readily perceived by persons encountering the goods or services in connection with which it is used”).

None of the tones emitted by Motorola’s two-way radios, including the 911 Hz Tone, meets this fundamental standard. Like the multiple ratings designations in *Moody’s* and the multiple phrases and pictures in the advertising in *Morganroth*, none of the Motorola tones functions individually as an indication of origin that may be readily perceived as such by the person encountering it. On the contrary, the Motorola tones function in a way similar to tones

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<sup>6</sup> The descriptions of the 911 Hz Tone in manuals and training materials cannot themselves constitute use as a trademark sufficient to meet the statutory prerequisite. First, use of a sound mark cannot be established by evidence of non-aural references. *See Ride the Ducks, LLC v. Duck Boat Tours, Inc.*, 75 U.S.P.Q.2d (BNA) 1269, 1276 (E.D. Pa. 2005). But even if printed descriptions were able to substitute for use of the actual sound, Motorola’s vague and inconsistent characterizations of the Call-Back tone, included within extensive lists of other operationally functional tones and buried in extensive manuals, *see, e.g.*, paragraph 17 above citing Ex. 7 at MOT 002217, Ex. 8 at MOT 000269, and Ex. 9 at MOT 000321, could not be understood by users or purchasers of the two-way radios as trademarks indicating the source of the products. *See Morganroth, National Geographic, and Whataburger* cases cited *infra* in text.

encountered in everyday life, which indicate the status of a device or the occurrence of a particular event. When a user encounters Motorola's "Talk Permit" tone – the 911 Hz Tone – while operating the two-way radio, he or she knows nothing more than that the line is open, just as the device's "Dispatch Busy" tone tells him or her that the line is busy. *See* Ex. 9 at MOT 000321.

Motorola's description of the specimen it submitted in support of its application could not be more clear as to how the 911 Hz Tone is used, stating that it "emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak." Ex. 1, Notice of Opposition, at ¶ 8; Ex. 2, Answer, at ¶ 8 (emphasis added). And the undisputed evidence fully confirms that characterization, establishing that in every one of the circumstances in which a user or potential purchaser of Motorola's two-way radios hears the 911 Hz Tone, it is as a signal that specifically and exclusively denotes the activation of the "Talk-Permit" or "Call-Back" feature of the product. *See* Ex. 4, Klein Depo. Excerpt, at 42-43, 103-05, 110, 119, 123.

As a general matter, consumers expect two-way radios (and other aural communications devices) to make audible tones that correlate to various operations of the products, and do not consider those sounds to act as source identifiers. Indeed, Motorola maintained the 911 Hz Tone across successive generations of two-way radio products precisely because the tone had operational significance, and consistency avoided the need to retrain users. Klein Depo. at 103-104. Motorola's witness acknowledged that other two-way radio manufacturers must also provide signal tones that serve the same purpose in their products. *See id.* at 92, 94-95.

For the 911 Hz Tone specifically, Motorola's witness repeatedly confirmed that users encounter it only as an operational indication of the availability of the Talk-Permit or Call-Back

function. Motorola admitted that at trade shows, no use is made of the 911 Hz Tone other than in connection with operation of the function that it signifies:

Q: Now, at any of those trade shows, are you aware of any instance in which Motorola featured the 911 Hz Tone other than in connection with the operation of the function that it signifies?

A: I'm not aware of any other – any other presentation of that tone.

*Id.* at 123. The same point was reconfirmed with respect to use of the tone in product demonstrations by Motorola sales representatives:

Q. And in that context as well, is it the case that when you hear the tone, it's because the channel open function is working?

A. Again, the tone has always been in reference to either the call-back availability or of the microphone active and communications occurring.

*Id.* at 104-05 (emphasis added).

Accordingly, whenever consumers hear the 911 Hz Tone, they perceive that tone as an indicator of the current status of the two-way radio, and not as an indication of the source of the goods. The 911 Hz Tone is merely one tone plucked from a myriad of tones emitted by Motorola's two-way radios, all used as operational signals. Motorola has never highlighted the 911 Hz Tone in advertising or otherwise used it as a source-identifying mark. Merely embedding a sound chip in the products and demonstrating the tone in its function as an operational signal is legally insufficient to establish trademark use.<sup>7</sup>

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<sup>7</sup> Motorola's 30(b)(6) witness asserted that the 911 Hz Tone serves to indicate source when users hear the tone during use of a two-way radio, but only because the radio displays "the Motorola label, the trademarks, the bat wing emblem, things like that." Ex. 4, Klein Depo. Excerpt, at 45-46. The source identification, in other words, comes from Motorola's actual trademarks, not the tone. *See In re Benetton Group S.p.A.*, 48 U.S.P.Q.2d (BNA) 1214, 1216-17 (TTAB 1998).

**B. Any Attempt to Show Distinctiveness of the 911 Hz Tone Would Be Unavailing**

The handful of decisions addressing sound marks establish special requirements with respect to the question of distinctiveness. As the Board has observed, “the criteria for the registration of sound marks must be somewhat different” from the criteria for other more conventional types of marks, given the fact that, unlike a visually perceptible trademark applied to goods, an asserted sound mark “depends upon aural perception of the listener which may be as fleeting as the sound itself.” *In re General Elec. Broad. Co., Inc.*, 199 U.S.P.Q. (BNA) 560, 563 (TTAB 1978). Thus, especially for alleged sound marks that “resemble or imitate ‘commonplace’ sounds or those to which listeners have been exposed under different circumstances,” persuasive evidence must be presented to support the acquired distinctiveness of the sound. *Id.*; see also, e.g., *Ride the Ducks*, 75 U.S.P.Q.2d at 1274-76. And for sound marks as well as other kinds of marks, an allegedly distinctive product feature or configuration that merely follows industry practice and meets consumer expectations for such a product, however unique it may otherwise be, will not be found inherently distinctive. See, e.g., *CITC Indus. Inc. v. Levi Strauss & Co.*, 216 U.S.P.Q. (BNA) 512 (TTAB 1982) (batwing mark incorporated in shoe sole design); *Anchor Hocking Glass Corp. v. Corning Glass Works*, 162 U.S.P.Q. (BNA) 288 (TTAB 1969) (stylized floral design on glassware).

Analogously, applicants asserting trademark rights in product configurations or other non-traditional marks that, like the 911 Hz Tone, have denotative significance must demonstrate “that the primary significance of the term in the minds of the consuming public is not the product but the producer.” *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118 (1938) (emphasis added); *Inwood Lab., Inc. v. Ives Lab., Inc.*, 456 U.S. 844, 851 n.11, 857-58 n. 20 (1982) (pharmaceutical capsule colors, even though arbitrarily selected, served functional purpose).



But even a claim of inherent or acquired distinctiveness cannot overcome the failure of the 911 Hz Tone to function as a mark. Where matter sought to be registered is not registrable because it is not a mark within the meaning of the Trademark Act, a claim that the matter has acquired distinctiveness under §2(f) as applied to the applicant's goods or services does not overcome the refusal. *See, e.g., In re G.D. Searle & Co.*, 360 F.2d 650, 655 [149 U.S.P.Q. (BNA) 619, 624] (CCPA 1966) (“[w]here it appears that registrability of the term is precluded under sections 45 and 2 [because it does not function as a source identifier], inquiry under sections 2(e) and 2(f) is not necessary”); *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 33, [58 U.S.P.Q.2d (BNA) 1001, 1007] (2001) (“[f]unctionality having been established, whether MDI's dual spring design has acquired secondary meaning need not be considered”); *In re Tilcon Warren, Inc.*, 221 U.S.P.Q. (BNA) 86, 88 (TTAB 1984) (“[l]ong use of a slogan which is not a trademark and would not be so perceived does not, of course, transform the slogan into a trademark”). Even an inherently distinctive designation cannot be registered as a trademark unless it is used as one. *See In re Niagara Frontier Serv., Inc.*, 11 U.S.P.Q. (BNA) at 286 (advertising slogan found not merely descriptive, but nonetheless unregistrable because not used as a mark).

Motorola's own survey fails for this very reason. The survey methodology was based on the explicit premise that acquired distinctiveness could be shown by first establishing whether the sound is recognized as indicating a particular event, not a product's source. *See* Ex. 11, Rappeport Survey Report, at MOT 004677. The questionnaire compounded that mistaken premise, by asking respondents who initially identified the 911 Hz Tone, for example, as a signal from a two-way radio, this follow-up question:

“You said that sound comes from a [two-way radio]. Are you thinking of one company who makes that [two-way radio] or more than one company who makes that [two-way radio]?”

*Id.* at MOT 004681 (emphasis added). In other words, respondents were not being asked whether they associated the 911 Hz Tone with a particular company source, but whether they associated particular products with such a company. In the case of the Motorola products, the latter association could only have resulted, as admitted by Motorola, through the application of Motorola’s registered trademarks and labels affixed to the two-way radios. *See* Ex. 4, Klein Depo. Excerpt, at 45-46; *see, e.g.*, Ex. 7, at MOT 002212 (graphical representation of portable radio). At most, the survey collected information about some users’ recognition of the fact that Motorola-branded radios were made by Motorola.

Thus, the survey responses could in no way properly be read as evidence of acquired distinctiveness of the 911 Hz Tone.<sup>8</sup> In fact, on the contrary, the survey design effectively concedes the central reason for dismissing Motorola’s application as a matter of law: that the

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<sup>8</sup> Indeed, even if the survey had been properly designed and implemented, the results – only 11% identified the product and Motorola as its single source – could not support a finding of acquired distinctiveness. *See, e.g., I.P. Lund Trading ApS v. Kohler Co.*, 118 F.Supp.2d 92, 107, [56 U.S.P.Q.2d (BNA) 1776, 1789] (D. Mass. 2000) (50% or higher typically considered sufficient). Although the Study purports to lump these disappointing results for Motorola together with much higher percentages for Nextel to arrive at a 42% aggregate figure, Ex. 11, Rapoport Survey Report, at MOT 004686, that approach is impermissible in this context. In *Lund*, a survey also conducted by Dr. Rapoport was rejected on the basis that it inappropriately lumped single-source responses together to get to 62%. The court noted that only 33% of the respondents associated the alleged mark with the correct source, while the remaining respondents identified its competitor or another manufacturer. *Lund* at 1789. “There can be no secondary meaning if the majority of consumers surveyed – and knowledgeable ones at that – believed the [product at issue] came from a single source, but when asked, it became clear that the vast majority of consumers did not associate the design with [applicant].” *Id.*; *see also, e.g., Zippo Mfg. Co. v. Rogers Imports, Inc.*, 216 F. Supp. 670, 689, [137 U.S.P.Q. (BNA) 413, 428] (S.D.N.Y. 1963) (25% insufficient to establish secondary meaning, particularly in light of fact that 24.1% incorrectly identified a different well-known company as the product’s source); *Carroll Shelby Licensing, Inc. v. Superperformance Int’l, Inc.*, 251 F. Supp.2d 983, 987 (D. Mass 2002) (survey was “completely unreliable” because of the expert’s “conclusory grouping of responses”).

911 Hz Tone was used to denote an operational “event” or function of the product, and not as a trademark identifying the source of the product.

#### **IV. Motorola’s Affirmative Defense Is Insufficient as a Matter of Law**

Motorola asserted the affirmative defense of acquiescence and/or laches in its Answer to the Notice of Opposition. This defense fails as a matter of law.

In *Nat’l Cable Television Ass’n Inc. v. American Cinema Editors Inc.*, 937 F.2d 1572, 1581 [19 U.S.P.Q.2d (BNA)1424, 1432] (Fed. Cir. 1991), the Federal Circuit held that a defense of laches is unavailable as a matter of law in an opposition proceeding, as any laches period with respect to registration can only begin to run upon publication of the application, not upon purported knowledge of use of the mark. Motorola’s mark was published for opposition on February 24, 2004. Sprint Nextel timely filed its opposition on August 23, 2004, after obtaining appropriate extensions of time to oppose. Motorola’s laches defense should be dismissed as a matter of law under the *NCTA* ruling.

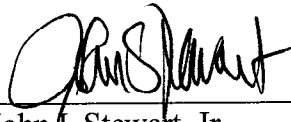
Furthermore, “[a]cquiescence and estoppel require some affirmative act by opposer which led applicant to reasonably believe that opposer would not oppose applicant’s registration of its mark.” *DAK Indus., Inc., v. Daiichi Kosho Co., Ltd.*, 25 U.S.P.Q.2d (BNA) 1622, 1625 (TTAB 1993). Motorola has identified no evidence of such an affirmative act by Sprint Nextel, because there is none. Especially in view of the fact that Motorola never used the 911 Hz Tone as a mark, there could have been no basis for Sprint Nextel to imagine that Motorola would seek registration until it ultimately did so, twelve years after its first alleged use. Motorola could not have had any reasonable basis for a belief that Sprint Nextel would not oppose such a registration. Sprint Nextel has carried its burden under Rule 56, *see Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Kellogg Co. v. Pack’em Enterprises, Inc.*, 951 F.2d 330, [21

U.S.P.Q.2d (BNA) 1142] (Fed. Cir. 1991), and Motorola's acquiescence defense should also be stricken.

**V. CONCLUSIONS**

For the reasons stated herein, Sprint Nextel respectfully requests that the Board find that the 911 Hz Tone is not entitled to a trademark registration and that Motorola's asserted affirmative defenses of acquiescence and/or laches are insufficient as a matter of law. Therefore, Sprint Nextel respectfully requests that its Motion for Summary Judgment be GRANTED, that Application No. 78/235,618 be refused registration, and that the instant Opposition be sustained.

Respectfully,



\_\_\_\_\_  
John L. Stewart, Jr.  
Michael H. Jacobs  
Karen C. Hermann  
William J. Sauers  
Attorneys for Sprint Nextel

November 11, 2005

CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-5116

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 2.198, I hereby certify that a true copy of OPPOSER'S MOTION FOR SUMMARY JUDGMENT was served on counsel for Motorola on the 11<sup>th</sup> day of November, 2005, by e-mail (without exhibits), and by sending the exhibits to the same on the 12<sup>th</sup> day of November, 2005, by United States Postal Service Express Mail, to:

John T. Gabrielides  
BRINKS, HOFER, GILSON & LIONE  
455 North Cityfront Plaza Drive  
NBC Tower, Suite 3600  
Chicago, Illinois 60611-5599

  
Michael H. Jacobs

**Opposer's Exhibit 1**

ESTTA Tracking number: **ESTTA13805**

Filing date: **08/23/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Nextel Communications, Inc.
<b>Granted to Date of previous extension</b>	08/22/2004
<b>Address</b>	Nextel Communications, Inc. 2001 Edmund Halley Drive Reston, VA 20191 UNITED STATES

<b>Attorney information</b>	John I. Stewart, Jr. Crowell & Moring LLP 1001 Pennsylvania Avenue, NW Washington, DC, DC 20004 UNITED STATES jstewart@crowell.com, kherrmann@crowell.com, wsauers@crowell.com Phone:(202) 624-2500
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#### Applicant Information

<b>Application No</b>	78235618	<b>Publication date</b>	02/24/2004
<b>Opposition Filing Date</b>	08/23/2004	<b>Opposition Period Ends</b>	08/22/2004
<b>Applicant</b>	Motorola, Inc.		

**Goods/Services Affected by Opposition**

Class 009. First Use: 19910506 First Use In Commerce: 19910506 All goods and services in the class are opposed, namely: Two-way radios
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<b>Attachments</b>	Notice of Opposition (Executed).pdf ( 4 pages )
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<b>Signature</b>	/John I. Stewart, Jr./
<b>Name</b>	John I. Stewart, Jr.
<b>Date</b>	08/23/2004



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE**  
**THE TRADEMARK TRIAL AND APPEAL BOARD**

NEXTEL COMMUNICATIONS, INC., )

Opposer, )

v. )

MOTOROLA, INC., )

Applicant. )

Opp. No.: \_\_\_\_\_

App. No.: 78/235,618

Pot. Mark: SENSORY MARK  
(911 Hz tone)

**BOX - TTAB - FEE**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**NOTICE OF OPPOSITION**

Honorable Commissioner:

NEXTEL COMMUNICATIONS, INC. ("Opposer"), a corporation duly organized and existing under the laws of the State of Delaware, located and doing business at 2001 Edmund Halley Drive, Reston, VA 20191, believing that it will be damaged by registration, hereby opposes Application Serial No. 78/235,618, filed April 9, 2003, under the Trademark Act of 1946, as amended ("Lanham Act"), in the name of MOTOROLA, INC. ("Applicant").

The grounds for opposition are as follows:

1. Opposer is one of the largest providers of cellular telephone and dispatch communications services in the United States, and currently has over 12 million subscribers to its services nationwide.

2. Opposer and Applicant have a long-standing business relationship, whereby Applicant manufactures phones, and accessories therefor, for sale by Opposer for use with Opposer's cellular telephone and dispatch services.

3. Applicant manufactures phones and accessories for Opposer's direct competitors.

4. On April 9, 2003, Applicant filed an application for registration of an electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on ("the 911 Hz Tone Application"). The 911 Hz Tone Application was assigned Serial No. 78/235,618, and was published for opposition in the Official Gazette on February 24, 2004. As published for opposition, the goods recited in the 911 Hz Tone Application are "[t]wo-way radios."

5. The 911 Hz Tone Application was filed under Section 1(a) of the Lanham Act, and claimed May 6, 1991, as the date of first use and the date of first use in commerce.

6. On October 17, 2003, the United States Patent and Trademark Office ("USPTO") issued an Office Action in connection with the 911 Hz Tone Application, requiring a description of the 911 Hz tone and a specimen evidencing use of the 911 Hz tone in commerce.

7. On October 17, 2003, Applicant submitted a response to the USPTO Office Action. The response included a description of the 911 Hz tone as follows:

“[t]he mark is an electronic chirp consisting of a tone at 911 Hz played at a cadence of 25 ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON.”

8. Applicant’s response to the USPTO Office Action also included a specimen of use in the form of a compact disc described as “[a] sound file that contains a sound that emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak.” The specimen was asserted to have been in use in commerce since at least as early as the filing date of the application.

9. Upon information and belief, Applicant has not used the 911 Hz tone in commerce in connection with the goods listed in the 911 Hz Tone Application, in derogation of Sections 1 and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051, 1127.

10. Upon information and belief, the 911 Hz tone is not inherently distinctive and has not acquired distinctiveness as to the goods listed in the 911 Hz Tone Application, in derogation of Sections 1, 2, and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051, 1052, 1127.

11. Opposer avers that, as it is a purchaser and potential purchaser of communications devices incorporating two-way radio capabilities from Applicant and other vendors of such devices, and as Opposer also sells such devices to end users, it will be damaged by the unjustified registration by Applicant of the 911 Hz tone as set forth in the 911 Hz Tone Application.

**WHEREFORE**, Opposer, NEXTEL COMMUNICATIONS, INC., believes and avers that it will be damaged by registration of the 911 Hz tone as aforesaid, and prays that said Application Serial No. 78/235,618 be rejected, that no

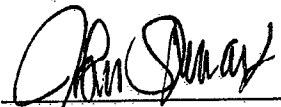
registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed JOHN I. STEWART, JR., JEFFREY D. SANOK, and MICHAEL H. JACOBS, members of the law firm of CROWELL & MORING LLP, and members of the Bar of the District of Columbia, to prosecute this Opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

**John I. Stewart, Jr.**  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-5116

The filing fee in the amount of \$300.00 should be charged to the Deposit Account of Crowell & Moring LLP, Account Number 05-1323 (Docket #100773.92133US). Please credit any overpayments or charge any additional fees to the Deposit Account of Crowell & Moring LLP, Account Number 05-1323 (Docket #100773.92133US).

Respectfully submitted,



John I. Stewart, Jr.  
Attorney for Opposer

August 23, 2004

**CROWELL & MORING LLP**  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-5116

**Opposer's Exhibit 2**

ESTTA Tracking number: **ESTTA17332**

Filing date: **10/18/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91161817
<b>Party</b>	Defendant Motorola, Inc. Motorola, Inc. 1303 East Algonquin Road Schaumburg, IL 60196
<b>Correspondence Address</b>	Carolyn E. Knecht Motorola, Inc. 600 North U.S. Highway 45 Libertyville IL U, SA 60196
<b>Submission</b>	Answer
<b>Filer's Name</b>	John T. Gabrielides
<b>Filer's e-mail</b>	officeactions@brinkshofer.com
<b>Signature</b>	/jtg/
<b>Date</b>	10/18/2004
<b>Attachments</b>	Answer 101804 F.pdf ( 5 pages )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NEXTEL COMMUNICATIONS, INC.,

Opposer,

v.

MOTOROLA, INC.,

Applicant.

Opposition No.: 91161817

App. No.: 78/235,618

Mark: SENSORY MARK  
(911 Hz tone)

**ANSWER TO NOTICE OF OPPOSITION**

Motorola, Inc. ("Applicant") answers the Notice of Opposition as follows. For the Board's convenience, each allegation in the Notice is set forth below and followed by Applicant's answer thereto.

1. Opposer is one of the largest providers of cellular telephone and dispatch communications services in the United States, and currently has over 12 million subscribers to its services nationwide.

**ANSWER:** Applicant admits that Opposer is one of the largest providers of cellular telephone services in the United States. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1, and therefore, denies the allegations.

2. Opposer and Applicant have a long-standing business relationship, whereby Applicant manufactures phones, and accessories therefor, for sale by Opposer for use with Opposer's cellular telephone and dispatch services.

**ANSWER:** Applicant admits that it has a long-standing business relationship with Opposer. Applicant admits that it is a manufacturer of MOTOROLA phones and phone accessories that function on MOTOROLA network infrastructure operated by Opposer, and which

phones and accessories are sold to Opposer for resale to Opposer's cellular service customers. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 2, and therefore, denies the allegations.

3. Applicant manufactures phones and accessories for Opposer's direct competitors.

**ANSWER:** Applicant admits that it is a manufacturer of MOTOROLA phones and phone accessories that are sold to Opposer's direct competitors for resale to cellular service customers. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 3, and therefore, denies the allegations.

4. On April 9, 2003, Applicant filed an application for registration of an electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on ("the 911 Hz Tone Application"). The 911 Hz Tone Application was assigned Serial No. 78/235,618, and was published for opposition in the Official Gazette on February 24, 2004. As published for opposition, the goods recited in the 911 Hz Tone Application are "[t]wo-way radios."

**ANSWER:** Applicant admits the allegations of paragraph 4.

5. The 911 Hz Tone Application was filed under Section 1(a) of the Lanham Act, and claimed May 6, 1991, as the date of first use and the date of first use in commerce.

**ANSWER:** Applicant admits the allegations of paragraph 5.

6. On October 17, 2003, the United States Patent and Trademark Office ("USPTO") issued an Office Action in connection with the 911 Hz Tone Application, requiring a description of the 911 Hz tone and a specimen evidencing use of the 911 Hz tone in commerce.

**ANSWER:** Applicant admits the allegations of paragraph 6.

7. On October 17, 2003, Applicant submitted a response to the USPTO Office Action. The response included a description of the 911 Hz tone as follows: "[t]he mark is an electronic chirp consisting of a tone at 911 Hz played at a cadence of 25 ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON."

**ANSWER:** Applicant admits the allegations of paragraph 7.



8. Applicant's response to the USPTO Office Action also included a specimen of use in the form of a compact disc described as "[a] sound file that contains a sound that emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak." The specimen was asserted to have been in use in commerce since at least as early as the filing date of the application.

**ANSWER:** Applicant admits the allegations of paragraph 8.

9. Upon information and belief, Applicant has not used the 911 Hz tone in commerce in connection with the goods listed in the 911 Hz Tone Application, in derogation of Sections 1 and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051, 1127.

**ANSWER:** Applicant denies the allegations of paragraph 9.

10. Upon information and belief, the 911 Hz tone is not inherently distinctive and has not acquired distinctiveness as to the goods listed in the 911 Hz Tone Application, in derogation of Sections 1, 2 and 45 of the Lanham Act. *See* 15 U.S.C. §§ 1051, 1052, 1127.

**ANSWER:** Applicant denies the allegations of paragraph 10.

11. Opposers avers that, as it is a purchaser and potential purchaser of communications devices incorporating two-way radio capabilities from Applicant and other vendors of such devices, and as Opposer also sells such devices to end users, it will be damaged by the unjustified registration by application of the 911 Hz tone as set forth in the 911 Hz Tone Application.

**ANSWER:** Applicant denies the allegations of paragraph 11.

### **AFFIRMATIVE DEFENSE**

#### **OPPOSER IS ESTOPPED BY ACQUIESCENCE AND/OR LACHES**

Opposer has long been aware of Applicant's adoption and use of the 911 Hz Tone mark but has failed to object to Applicant's adoption or use thereof, until the filing of the Notice of Opposition. During Opposer's unreasonable delay, Applicant's 911 Hz Tone mark, which is inherently distinctive, has acquired additional distinctiveness and has generated substantial goodwill for Applicant. Applicant has relied to its detriment on

Opposer's failure to object. Opposer's conduct constitutes estoppel by acquiescence and/or laches, thereby barring Opposer from obtaining any relief by its Notice.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety with prejudice and that a registration issue to Applicant for its 911 Hz Tone mark.

Respectfully submitted,

MOTOROLA, INC.

Dated: October 18, 2004

By: 

John T. Gabrielides

Elysa M. Valenzona

BRINKS HOFER GILSON & LIONE

P.O. Box 10395

Chicago, IL 60610

Phone: (312) 321-4200

Fax: (312) 321-4299

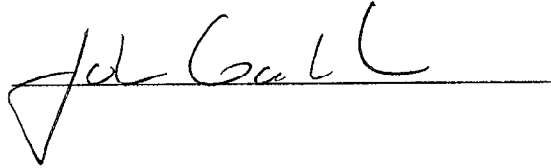
Attorneys for Applicant

**Certificate of Service**

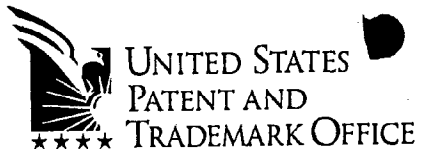
The undersigned hereby certifies that a true and correct copy of the foregoing  
**ANSWER TO NOTICE OF OPPOSITION** was served on Opposer's counsel by first class  
mail, postage prepaid, addressed as follows:

John I. Stewart, Jr.  
Crowell & Moring, LLP  
P.O. Box 14300  
Washington, D.C. 20004-4300

on October 18, 2004.

A handwritten signature in black ink, appearing to read "John I. Stewart, Jr.", is written over a horizontal line. The signature is stylized, with the first name "John" and last name "Stewart" clearly visible, followed by "Jr." in smaller script.

**Opposer's Exhibit 3**



Feb 4, 2004

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
[www.uspto.gov](http://www.uspto.gov)

## NOTICE OF PUBLICATION UNDER 12(a)

- |                                      |                                     |
|--------------------------------------|-------------------------------------|
| 1. Serial No.:<br>78/235,618         | 2. Mark:<br>No Drawing-Sensory Mark |
| 3. International Class(es):<br>9     |                                     |
| 4. Publication Date:<br>Feb 24, 2004 | 5. Applicant:<br>Motorola, Inc.     |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: (202)512-1800

By direction of the Commissioner.

☐ AMENDMENT STAGE☒ NO CHANGE☒ PUBLICATION/REGISTRATION STAGE

Name TRACY SMITH L.O. 112 Date 01/05/2004 Serial No. 7 /

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

## Legal Instrument Examiner (LIE)

	Amended	Data Element
Class Data	<input type="checkbox"/>	<input type="checkbox"/> Prime/International Class
	<input type="checkbox"/>	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	<input type="checkbox"/> First Use Date
	<input type="checkbox"/>	<input type="checkbox"/> First Use in Commerce Date
Mark Data	<input type="checkbox"/>	<input type="checkbox"/> In Another Form
	<input type="checkbox"/>	<input type="checkbox"/> Certification
	<input type="checkbox"/>	<input type="checkbox"/> 1b
	<input type="checkbox"/>	<input type="checkbox"/> Word Mark
Misc. Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code
	<input type="checkbox"/>	<input type="checkbox"/> Design Search Code
Section 2(f)	<input type="checkbox"/>	<input type="checkbox"/> Scan Sub Drawing
	<input type="checkbox"/>	<input type="checkbox"/> Mark Description
	<input type="checkbox"/>	<input type="checkbox"/> Disclaimer
Foreign Reg. Data	<input type="checkbox"/>	<input type="checkbox"/> Lining/Stippling
	<input type="checkbox"/>	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	<input type="checkbox"/> Translation
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement
Owner Data	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Country
	<input type="checkbox"/>	<input type="checkbox"/> 44(d)
Amd/Corr Restr.	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date
Prior U.S. Reg.	<input type="checkbox"/>	<input type="checkbox"/> Foreign Renewal Reg. Date
	<input type="checkbox"/>	<input type="checkbox"/> Owner Name
Correspondence	<input type="checkbox"/>	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	<input type="checkbox"/> Address 1
	<input type="checkbox"/>	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	<input type="checkbox"/> City
	<input type="checkbox"/>	<input type="checkbox"/> State
	<input type="checkbox"/>	<input type="checkbox"/> Zip Code
Other:	<input type="checkbox"/>	<input type="checkbox"/> Citizenship
	<input type="checkbox"/>	<input type="checkbox"/> Entity
	<input type="checkbox"/>	<input type="checkbox"/> Entity Statement
	<input type="checkbox"/>	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change
	<input type="checkbox"/>	<input type="checkbox"/> Concurrent Use
	<input type="checkbox"/>	<input type="checkbox"/> Prior Registration
	<input type="checkbox"/>	<input type="checkbox"/> Attorney
	<input type="checkbox"/>	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number
	<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address

I certify that all corrections have been entered in accordance with text editing guidelines.

LIE TRACY SMITH

Other:

# TRADEMARK EXAMINATION WORKSHEET

☒ AMENDMENT STAGE

☐ NO CHANGE

☐ PUBLICATION/REGISTRATION STAGE

Name TRACY SMITH L.O. 112 Date 11/18/2003 Serial No. 7\_\_ /

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

## Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data		<input type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
		<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
		<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
		<input type="checkbox"/> 1b	
Mark Data		<input checked="" type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
		<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
		<input type="checkbox"/> Scan Sub Drawing	
Misc. Mark Data		<input checked="" type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
		<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
		<input type="checkbox"/> Translation	
Section 2(f)		<input type="checkbox"/> Section 2(f) Entire Mark	
		<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
		<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data		<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
		<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
		<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
		<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
		<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data		<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
		<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
		<input type="checkbox"/> City	<input type="checkbox"/> State
		<input type="checkbox"/> Zip Code	
		<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
		<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
		<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.		<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.		<input type="checkbox"/> Prior Registration	
Correspondence		<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
		<input type="checkbox"/> Attorney Docket Number	
		<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

LIE

Other:

Cofm 10/17/03

TRACY SMITH

11/18/2003

NOV 20 2003

# Incoming Correspondence Routing Sheet

To: TMO LAW OFFICE 112 - AWAITING RESPONSE DOCKET

Word Mark: (Design Mark Only)

Serial No: 78235618



Mail Date: 10202003



Doc. Type: Responses to Office Actions



---

No Fee

RAM Mail Date: 102003



RECEIVED  
2003 NOV - 1 A 10:33  
TMO  
LAW OFFICE 112



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Motorola, Inc.      Examining Attorney: Patricia Malesardi Evanko  
Serial No: 78235618      Law Office: 112  
Filed: April 22, 2003      Int'l Class: 009  
Mark: (SENSORY MARK ONLY)  
Attorney Docket No: TM03-1006

October 17, 2003

BOX ITU  
NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

RECEIVED  
TMEO  
LAW OFFICE 112  
2003 NOV - 1 A 10: 33

RESPONSE TO OFFICE ACTION DATED OCTOBER 17, 2003 WITH DECLARATION

CERTIFICATE OF MAILING BY FIRST CLASS MAIL	
I, <u>Kristen D. Poggensee</u>	hereby certify that this correspondence is
(printed name)	
being deposited with the United States Postal Service on <u>10/17/03</u>	as first
(date)	
class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on:	
Date: <u>10/17/03</u>	Signature: <u>Kristen D. Poggensee</u>

Responsive to the Office Action dated October 17, 2003, Applicant submits the following description of the mark:

The mark is an electronic chirp consisting of a tone at 911 Hz played at a cadence of 25 ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON.

Applicant submits a CD specimen for the above-referenced sound mark. TMEP §904, §1202.15. The specimen is a sound file that contains a sound that emanates from a two-way radio to alert user or receiver of an incoming call or the availability to speak.



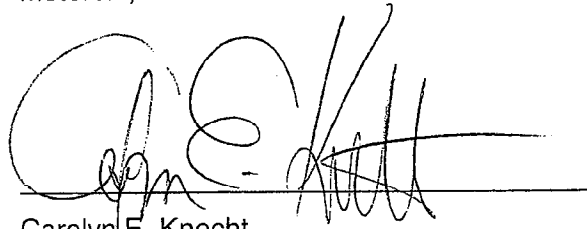
10-20-2003

The specimen being submitted was in use in commerce at least as early as the filing date of the application.

#### DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Motorola, Inc.

A handwritten signature in black ink, appearing to read 'Carolyn E. Knecht', written over a horizontal line.

Carolyn E. Knecht

Senior Trademark Counsel

Date: Oct. 17, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Motorola, Inc.      Examining Attorney: Patricia Malesardj Evanko  
Serial No: 78235618      Law Office: 112  
Filed: April 22, 2003      Int'l Class: 009  
Mark: (SENSORY MARK ONLY)

Attorney Docket No: TM03-1006

October 17, 2003

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NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

RESPONSE TO OFFICE ACTION DATED OCTOBER 17, 2003 WITH DECLARATION

CERTIFICATE OF MAILING BY FIRST CLASS MAIL	
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(printed name)	
being deposited with the United States Postal Service on <u>10/17/03</u>	as first
(date)	
class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on:	
Date: <u>10/17/03</u>	Signature: <u>Kristen D. Poggensee</u>

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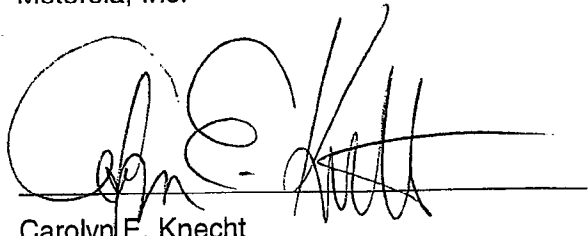
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The specimen being submitted was in use in commerce at least as early as the filing date of the application.

#### DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Motorola, Inc.

A handwritten signature in dark ink, appearing to read 'Carolyn E. Knecht', written over a horizontal line.

Carolyn E. Knecht

Senior Trademark Counsel

Date: Oct. 17, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Motorola, Inc. Examining Attorney: Patricia Malesardi Evanko  
Serial No: 78235618 Law Office: 112  
Filed: April 22, 2003 Int'l Class: 009  
Mark: (SENSORY MARK ONLY)

Attorney Docket No: TM03-1006

October 17, 2003

BOX ITU

NO FEE

Commissioner for Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3514

RESPONSE TO OFFICE ACTION DATED OCTOBER 17, 2003 WITH DECLARATION

CERTIFICATE OF MAILING BY FIRST CLASS MAIL	
I, <u>Kristen D. Poggensee</u>	hereby certify that this correspondence is
(printed name)	
being deposited with the United States Postal Service on <u>10/17/03</u>	as first
(date)	
class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on:	
Date: <u>10/17/03</u>	Signature: <u>Kristen D. Poggensee</u>

Responsive to the Office Action dated October 17, 2003, Applicant submits the following description of the mark:

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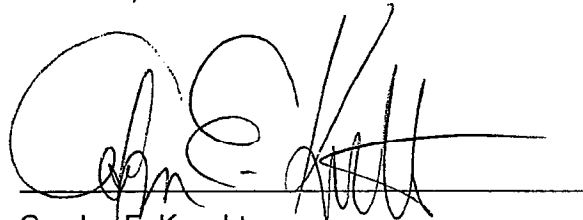
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The specimen being submitted was in use in commerce at least as early as the filing date of the application.

#### DECLARATION

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Motorola, Inc.

A handwritten signature in black ink, appearing to read 'Carolyn E. Knecht', written over a horizontal line.

Carolyn E. Knecht

Senior Trademark Counsel

Date: Oct. 17, 2003

7

<b>To:</b>	Motorola, Inc. (carrie.knecht@motorola.com)
<b>Subject:</b>	TRADEMARK APPLICATION NO: 78235618 - TM03-1006
<b>Sent:</b>	10/17/03 9:43:04 AM
<b>Sent As:</b>	ECom112
<b>Attachments:</b>	

## UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/235618

APPLICANT: Motorola, Inc.

**CORRESPONDENT ADDRESS:**

Carolyn E. Knecht  
Motorola, Inc.  
600 North U.S. Highway 45  
Libertyville IL USA 60196

**RETURN ADDRESS:**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
ecom112@uspto.gov

**MARK:**

CORRESPONDENT'S REFERENCE/DOCKET NO: TM03-1006

**CORRESPONDENT EMAIL ADDRESS:**

carrie.knecht@motorola.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

RE: Serial Number 78/235618

The assigned examining attorney has reviewed the referenced application and determined the following.

**Search Results**

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**Description of the Mark Needed**

The applicant must submit a concise description of the mark. 37 C.F.R. §2.37; TMEP §§808 *et seq.* The description must identify the sound mark in common English terms. For example, the following form is acceptable, if accurate:

The mark consists of the sound of [specify, e.g., a ringing telephone].



**Specimen Required**

An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods/services. TMEP §904. The application does not contain a specimen. Because this application is for a sound mark, the specimen must be a sound file. TMEP Section 1212.05. The applicant must submit a specimen, and must submit the following statement:

The specimen was in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.59(a); TMEP §904.09.

A sample declaration is set forth below for the applicant's convenience.

The following is a properly worded declaration under 37 C.F.R. §2.20. At the end of your response, please insert the declaration signed by someone authorized to sign under 37 C.F.R. §2.33(a):

The specimen was in use in commerce at least as early as the filing date of the application.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Signature \_\_\_\_\_

Name and Position \_\_\_\_\_

Date \_\_\_\_\_

NOTE: For the signature above, use the same format as the electronic signature on the original e-TEAS application, e.g., /john doe/ or /jd/. 37 CFR §2.193(c)(1)(iii); TMEP §§304.08 and 804.05.

/Patty Evanko/  
Trademark Examining Attorney  
Law Office 112  
(703)308-9112, ext. 163  
patty.evanko@uspto.gov (questions only)

**How to respond to this Office Action:**

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

<b>DOCUMENT INFORMATION</b>	
<b>TRADEMARK/SERVICEMARK APPLICATION</b>	
<b>VERSION 1.24</b>	
<b>APPLICANT INFORMATION</b>	
NAME	Motorola, Inc.
STREET	1303 East Algonquin Road
CITY	Schaumburg
STATE	IL
COUNTRY	USA
ZIP/POSTAL CODE	60196
TELEPHONE NUMBER	847-523-1633
FAX NUMBER	847-523-4348
<b>APPLICANT ENTITY INFORMATION</b>	
CORPORATION: STATE/COUNTRY OF INCORPORATION	Delaware
<b>TRADEMARK/SERVICEMARK INFORMATION</b>	
MARK	NO DRAWING (SOUND MARK)
TYPED FORM	Yes
<b>BASIS FOR FILING AND GOODS/SERVICES INFORMATION</b>	
USE IN COMMERCE: SECTION 1(a)	Yes
SPECIMEN	Yes
SPECIMEN DESCRIPTION	A sound specimen for this application has been submitted separately to the TEAS Help Section.

78235618

INTERNATIONAL CLASS NUMBER	009
LISTING OF GOODS AND/OR SERVICES	Two-way radios
FIRST USE ANYWHERE DATE	05/06/1991
FIRST USE IN COMMERCE DATE	05/06/1991
<b>OPTIONAL INFORMATION</b>	
DESCRIPTION OF THE MARK	The mark consists of a tone at 911 Hz played at a cadence of 25ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON..
<b>ATTORNEY INFORMATION</b>	
NAME	Carolyn E. Knecht
STREET	600 North U.S. Highway 45
CITY	Libertyville
STATE	IL
COUNTRY	USA
ZIP/POSTAL CODE	60196
FIRM NAME	Motorola, Inc.
E-MAIL ADDRESS	carrie.knecht@motorola.com
AUTHORIZE E-MAIL COMMUNICATION	Yes
TELEPHONE NUMBER	847-523-5876
FAX NUMBER	847-523-4348
ATTORNEY DOCKET NUMBER	TM03-1006
OTHER APPOINTED	Arch M. Ahern

78235618

ATTORNEY(S)	
<b>FEE INFORMATION</b>	
TOTAL FEES PAID	335
NUMBER OF CLASSES PAID	1
NUMBER OF CLASSES	1
<b>LAW OFFICE INFORMATION</b>	
E-MAIL ADDRESS FOR CORRESPONDENCE	carrie.knecht@motorola.com
<b>SIGNATURE AND OTHER INFORMATION</b>	
SIGNATURE	/cek/
DATE	04/09/2003
NAME	Carolyn E. Knecht
TITLE	Senior Trademark Counsel
<b>MAILING ADDRESS</b>	
LINE	Carolyn E. Knecht
LINE	Motorola, Inc.
LINE	600 North U.S. Highway 45
LINE	Libertyville IL USA 60196
<b>SERIAL NUMBER INFORMATION</b>	
SERIAL NUMBER	78235618
<b>RAM INFORMATION</b>	
RAM SALE NUMBER	828
RAM ACCOUNTING DATE	04/09/2003

78235618

INTERNET TRANSMISSION DATE	Wed Apr 09 13:04:09 EDT 2003
TEAS STAMP	USPTO/BAS-1361822222-20030409130409526135-78235618- 200551f906c6de47dcd8f64dcaa871f0ad-DA-828-20030409130129232154
E-MAIL ADDRESS FOR ACKNOWLEDGMENT	kristen.poggensee@motorola.com

&lt;SERIAL NUMBER&gt; 78235618

&lt;FILING DATE&gt; 04/09/2003

## &lt;DOCUMENT INFORMATION&gt;

&lt;TRADEMARK/SERVICEMARK APPLICATION&gt;

&lt;VERSION 1.24&gt;

## &lt;APPLICANT INFORMATION&gt;

&lt;NAME&gt;

Motorola, Inc.

&lt;STREET&gt;

1303 East Algonquin Road

&lt;CITY&gt;

Schaumburg

&lt;STATE&gt;

IL

&lt;COUNTRY&gt;

USA

&lt;ZIP/POSTAL CODE&gt;

60196

&lt;TELEPHONE NUMBER&gt;

847-523-1633

&lt;FAX NUMBER&gt;

847-523-4348

## &lt;APPLICANT ENTITY INFORMATION&gt;

&lt;CORPORATION: STATE/COUNTRY OF INCORPORATION&gt; Delaware

## &lt;TRADEMARK/SERVICEMARK INFORMATION&gt;

&lt;MARK&gt; NO DRAWING (SOUND MARK)

&lt;TYPED FORM&gt; Yes

~Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended).~

## &lt;BASIS FOR FILING AND GOODS/SERVICES INFORMATION&gt;

&lt;USE IN COMMERCE: SECTION 1(a)&gt; Yes

~The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.~

Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

&lt;SPECIMEN&gt; Yes

&lt;SPECIMEN DESCRIPTION&gt; A sound specimen for this application has been submitted separately to the TEAS Help Section.

&lt;INTERNATIONAL CLASS NUMBER&gt; 009

&lt;LISTING OF GOODS AND/OR SERVICES&gt; Two-way radios

<FIRST USE ANYWHERE DATE> 05/06/1991  
<FIRST USE IN COMMERCE DATE> 05/06/1991

**<OPTIONAL INFORMATION>**

<DESCRIPTION OF THE MARK> The mark consists of a tone at 911 Hz played at a cadence of 25ms ON, 25 ms OFF, 25 ms ON, 25 ms OFF, 50 ms ON..

**<ATTORNEY INFORMATION>**

<NAME> Carolyn E. Knecht  
<STREET> 600 North U.S. Highway 45  
<CITY> Libertyville  
<STATE> IL  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 60196  
<FIRM NAME> Motorola, Inc.  
<E-MAIL ADDRESS> carrie.knecht@motorola.com  
<AUTHORIZE E-MAIL COMMUNICATION> Yes  
<TELEPHONE NUMBER> 847-523-5876  
<FAX NUMBER> 847-523-4348  
<ATTORNEY DOCKET NUMBER> TM03-1006  
<OTHER APPOINTED ATTORNEY(S)> Arch M. Ahern

**<FEE INFORMATION>**

<TOTAL FEES PAID> 335  
<NUMBER OF CLASSES PAID> 1  
<NUMBER OF CLASSES> 1

**<LAW OFFICE INFORMATION>**

~The USPTO is authorized to communicate with the applicant's attorney at the below e-mail address~  
<E-MAIL ADDRESS FOR CORRESPONDENCE> carrie.knecht@motorola.com

**<SIGNATURE AND OTHER INFORMATION>**

~The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in



commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.~

&lt;SIGNATURE&gt;

/cek/

&lt;DATE&gt;

04/09/2003

&lt;NAME&gt;

Carolyn E. Knecht

&lt;TITLE&gt;

Senior Trademark Counsel

## &lt;MAILING ADDRESS&gt;

&lt;LINE&gt; Carolyn E. Knecht

&lt;LINE&gt; Motorola, Inc.

&lt;LINE&gt; 600 North U.S. Highway 45

&lt;LINE&gt; Libertyville IL USA 60196

## &lt;SERIAL NUMBER INFORMATION&gt;

&lt;SERIAL NUMBER&gt; 78235618

## &lt;RAM INFORMATION&gt;

&lt;RAM SALE NUMBER&gt; 828

&lt;RAM ACCOUNTING DATE&gt; 04/09/2003

&lt;INTERNET TRANSMISSION DATE&gt; Wed Apr 09 13:04:09 EDT 2003

&lt;TEAS STAMP&gt;

USPTO/BAS-136182222-20030409130409526135-78235618-

200551f906c6de47dcd8f64dcaa871f0ad-DA-828-20030409130129232154

E-MAIL ADDRESS FOR ACKNOWLEDGMENT&gt; kristen.poggensee@motorola.com

Internet Transmission Date:  
2003/04/09

Serial Number:  
78235618

Filing Date:  
2003/04/09



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

TOTAL FEES PAID: \$335

RAM SALE NUMBER: 828  
RAM ACCOUNTING DATE: 04/09/2003



NO OCR



04-09-2003

**Opposer's Exhibit 4**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC., )  
Opposer, ) Opp. No. 91/161,817  
vs. ) App. No. 78/235,618  
MOTOROLA, INC., ) Pot. Mark: SENSORY MARK  
Applicant. ) (911 Hz tone)

The videotape deposition of DAVID ERIC KLEIN,  
called by the Opposer for examination, taken before  
RICHARD H. DAGDIGIAN, CSR No. 084-000035, a notary public  
within and for the County of Cook, State of Illinois, and a  
Certified Shorthand Reporter of said State, at the offices  
of Brinks Hofer Gilson & Lione, 455 North Cityfront Plaza  
Drive, Suite 3600, on the 19th day of Jul 2005, commencing  
at 10:15 a.m.

1 APPEARANCES:

2 CROWELL & MORING

3 BY: JOHN I. STEWART, ESQ.

4 KAREN C. HERMANN, ESQ.

5 1001 Pennsylvanie Avenue, NW

6 Washington, D.C. 20004-2595

7 (202) 624-2685

8 on behalf of the Opposer;

9  
10 BRINKS HOFER GILSON & LIONE

11 BY: THOMAS M. WILLIAMS, ESQ.

12 455 N. Cityfront Plaza Drive, Suite 3600

13 Chicago, Illinois 60611-5599

14 (312) 321-4717

15 on behalf of the Applicant.

16  
17 ALSO PRESENT:

18 CAROLYN E. KNECHT, ESQ.

19 Senior Counsel Trademarks,

20 and

21 KRISTEN POGGENSEE, Paralegal Associate,

22 Corporate Law Department

23 Motorola, Inc.

24  
25 DEAN MARIS, Legal Videographer

1           Then it's pretty much the two major ways; the  
2 research itself could be involving interaction with  
3 customers, our own internal understanding of things. It's  
4 different approaches.

5           Q    Have you ever -- or has this organization --  
6 sorry -- ever done research on the 911 Hz Tone itself?

7           A    Specific to the 911 Hz Tone, I am unaware of any  
8 research focused directly at that tone.

9           Q    Are you aware of any research results that are  
10 related directly to the 911 Hz Tone?

11          A    No research results. We have heard customer  
12 feedback in interviews. I am not aware if it's tangible  
13 documentation as far as notes taken and recorded, though.

14          Q    What's the nature of that customer feedback?

15          A    Training and understanding how the product works.  
16 If they are to replace a product, they need to know that the  
17 user is able to understand how to use and feels comfortable  
18 with it, and understands that they know it.

19          Q    And how did that customer feedback relate  
20 directly to the 911 Hz Tone?

21          A    We have, consistent with our tones, over the life  
22 of the products, specifically for -- the internal term we  
23 use is "Hands on, eyes off".

24               Customers, without focusing on the products,  
25 understand what's happening, understand when the mike is

1 active. They are told in a consistent manner, and if they  
2 are using a Motorola product, there is an understanding that  
3 we -- that we have been consistent such that if they replace  
4 that Motorola product with another Motorola product,  
5 training of certain aspects of the radio are at a minimum or  
6 not even required.

7 Q Because they can use it in the same way as they  
8 have used prior products?

9 A They are able to -- they are very attuned to  
10 particular sounds, and it allows them to understand what's  
11 happening without them interacting.

12 So we have been consistent, and they are familiar  
13 enough with our products to know that tone means they can  
14 now talk.

15 Q Have you in the course of this product definition  
16 marketing organization's activities -- have you or others  
17 within the organization looked at competitors' products that  
18 are within the same product sector?

19 A We have -- we have reviewed competitors' products  
20 from a feature standpoint, aspects to how a bid is written  
21 or a request for proposal or request for bid, and we also  
22 analyze the products overall -- alterability, robustness;  
23 items that are very key to the customer, especially when  
24 they want a long lasting product, so key focus points we  
25 have on the durability, things like that.

1 MR. WILLIAMS: Are you ready for a short break?

2 A Yeah, I can use a little restroom break.

3 MR. STEWART: Great.

4 THE VIDEOGRAPHER: This is the Videographer. The  
5 time is 11:25 a.m. We are going off the record.

6 (Whereupon, a short recess was  
7 taken.)

8 THE VIDEOGRAPHER: We are back on the record. This  
9 is the Videographer. The time is 11:40 a.m.

10 BY MR. STEWART:

11 Q Is there a standard nomenclature within Motorola  
12 for identifying the function of the 911 Hz Tone and other  
13 tones generated by your products?

14 A Can you clarify.

15 Q You used some verbiage which I didn't write down  
16 before to identify what it is that the 911 Hz Tone signifies  
17 to a user of one of your radios, is that right?

18 A Correct.

19 Q Could you repeat that language. I will write it  
20 down this time.

21 A The 911 Hz Tone signifies the microphone --  
22 either the channels available for communication or that the  
23 microphone is active and transmitting.

24 So it allows the user to understand that. In  
25 addition, they know that when they hear that tone, that tone



1 is coming from a Motorola product.

2 Q Just a second on that. How do they know that  
3 it's coming from a Motorola product?

4 A There is a variety of ways. Motorola trains end  
5 users specifically in the tone; tones mentioned in end user  
6 documentation manuals, user guides.

7 The tone is heard at trade shows and in other  
8 events. Motorola provides a system that is at a trade show  
9 and be able to show the radio is communicating on the  
10 infrastructure, and that tone is audible there.

11 There is many -- many times, the sales folks will  
12 visit a customer and bring new products, and they can  
13 configure their products such that they can operate on the  
14 system and, then, they can show the customer the new  
15 products, and that -- and that tone, that audible tone is  
16 heard during the transmission attempts.

17 Q And is that all?

18 A Let me think. Manual, training, trade shows.  
19 There is -- to the best of my knowledge, I believe that's --  
20 that's my understanding of the association.

21 And in addition to the -- you know -- the  
22 Motorola products themselves make the tone; the emblem or  
23 the embossed label, the product is there.

24 As a matter of fact, we go through effort to make  
25 sure it can't be worn away. It appears multiple times on

1 the product such that when you hear that tone, you are  
2 presented with the Motorola label, the trademarks, the  
3 bat wing emblem, things like that.

4 So it's been that way for a while. So the  
5 repetition of the products, the repetition of the training,  
6 the consistencies are kind of the -- of that linkage.

7 Q Is that all?

8 A To what I can recall right now, yes.

9 Q If you recall anything further, please let me  
10 know.

11 A Okay.

12 Q You said that customers know it's from a Motorola  
13 product. And you listed these as ways in which a customer  
14 might know that.

15 Do you have any direct evidence that customers do  
16 know that the tone is emanated -- that the tone is a  
17 Motorola tone?

18 A I have no research statements that says that's  
19 fact. It's -- I don't have any research that gives that  
20 fact.

21 Q Do you have any other evidence that would  
22 demonstrate that a customer actually knows that this tone is  
23 a Motorola tone?

24 A From my own personal job related experience,  
25 explicitly it's been interaction with customers who do not

1 refer to it as their radio, but refer to it as their  
2 Motorola radio and, you know, the use of it -- when talking  
3 with them, you know, statements about what sounds it makes,  
4 was it explicit to a 911 tone? No, it was with reference to  
5 the tones that it makes.

6 Q Are you aware whether any other -- whether any  
7 product manufactured by any other manufacturer emits the  
8 same tone?

9 A Define "manufactured".

10 Q I'm stumped. Well, are you trying to distinguish  
11 between manufacturing and assembling, or what?

12 A Integrators --

13 Q Integrators?

14 A We have integrators.

15 Q Who buy Motorola manufactured devices and then  
16 sell them as part of a system, is that what you are talking  
17 about?

18 A Integrators that would purchase a Motorola radio  
19 with -- you know -- with our understanding that they would  
20 be placing it in either their product or a helicopter or  
21 something like that.

22 Q In those situations, is the radio branded as a  
23 Motorola radio, or by the integrator?

24 A I am not sure in all cases. For a particular  
25 case, it is branded as their products on the face of the

1 products -- an E. F. Johnson portable radio, mobile radio.

2 Q Beyond that, that kind of situation, are you  
3 aware of other manufacturers who produce products that emit  
4 a 911 Hz Tone?

5 A No, I'm not aware of any other.

6 Q Have you ever attempted to determine whether  
7 there was any such product?

8 A I myself have not actively sought to investigate  
9 that occurrence. I personally have not.

10 I am not aware -- to the best of my knowledge,  
11 I'm not aware if other people have actively investigated  
12 that.

13 Q Who would you ask if you wanted to find out  
14 whether Motorola -- anyone within Motorola had sought to  
15 determine that fact?

16 A I'm not a hundred percent sure. I would probably  
17 ask members -- or people who are involved with our  
18 Competitive Information Group.

19 Q Who are they?

20 A I specifically interface with Andres LaCambras.  
21 I can't spell that.

22 Q And he's within GEMS?

23 A Yes, he is.

24 Q By the way, GEMS is an acronym, is that correct?

25 A Yes it is.

1 Q What's it stands for?

2 A Government and Enterprise Mobile -- I think it's  
3 Mobile Solutions.

4 Q Okay. Fair enough. Which of the four  
5 organizations -- I'm sorry, let me start over.

6 The Competitive Information Group, is that within  
7 a business unit of GEMS?

8 A It is handled within the business unit of GEMS.

9 Q And what organization within the business unit?

10 A I'm not a hundred percent sure. There are --  
11 there is different people who help on different things.

12 Q Okay. Going back to my first question, the  
13 function that is represented by the 911 Hz Tone as used in  
14 the Motorola products is that the channel is available for  
15 communication or the microphone is active and transmitting,  
16 is that right?

17 A Correct.

18 Q Is there a short version of that that you use to  
19 describe that function in your devices?

20 A The training manuals and the user guide speak to  
21 it in two different ways, depending upon the group that  
22 these manuals are designed for.

23 One refers to it as the Talk-Permits tone, and  
24 one of it refers to as the Call-Back tone.

25 Q What's the difference between those two?

1           A    The Talk-Permit tone says that you pressed the  
2   PTT button, the push-to-talk button, and the channel is  
3   available, and the microphone is enabled or active for a  
4   Talk-Permit tone to occur.

5                    So once the radio is in that state of Talk-Permit  
6   tone, the radio plays the Talk-Permit tone or gives the  
7   Talk-Permit tone.

8           Q    Now, do these 911 Hz Tone products -- those are  
9   the two-way radios we have been talking about --

10          A    Okay --

11          Q    Also emit other tones?

12          A    Yes, they do.

13          Q    How many?

14          A    Somewhere in the range of nine to 12 different  
15   tones.

16          Q    And what are the functions that these other tones  
17   serve?

18          A    They range from -- there is no -- there is no  
19   channel available during communication, so it's a -- it's a  
20   Talk-Prohibit tone, to items like low battery.

21          Q    And do you engage in the same effort to make sure  
22   that successive generations of two-way radio products use  
23   the same tones for consistent functional references?

24          A    Yes, we do.

25          Q    And so these other tones have also been kept

1           Q   Is it your belief that someone within Motorola  
2   created it for the first time?

3           A   Yes, that is my belief.

4           Q   On what do you base that belief on?

5           A   I base -- I base that belief on conversations  
6   with Marlon Moo-Young and with Mitch Leshim.

7           Q   And what did they tell you that led you to that  
8   belief?

9           A   The creation of the tone itself has roots in the  
10   time aspects, when they were originally defining the  
11   trunking protocol. These time aspects were specific -- or  
12   were not known or stipulated before that effort.

13          Q   Explain that a bit further, if you would. What  
14   time aspects are you referring to?

15          A   The first radio was designed such that it would  
16   operate on a -- on this trunking protocol, a particular  
17   language used, communicates. There is expectations that  
18   information will be transmitted in a certain period of time  
19   .

20                These tones are based upon -- my understanding --  
21   a selection of certain groupings of these time periods in  
22   association with a particular selection of a pitch such that  
23   an esthetic tone was created.

24          Q   First, with respect to the time periods, are you  
25   referring to the duration of the entire time or the cadence

1 of the tone?

2 A The cadence.

3 Q And in what way is the cadence related -- I'm  
4 sorry, is the cadence then related technically to the  
5 transmission speed of the trunking protocol that was being  
6 put in place?

7 A Not technically. There is some relationship, but  
8 it's not technically related to.

9 Q In what way is it related?

10 A The radio was producing -- was producing events  
11 every 23 and a third milliseconds. They used that event and  
12 multiples of that events to create their cadence.

13 Q I see. Is there any significance to the duration  
14 of the tone in its entirety?

15 A No.

16 Q Is there any significance to the number of sounds  
17 within the tone in its entirety?

18 A No.

19 Q Was the 911 Hz Tone ever produced at a different  
20 frequency?

21 A Can you clarify.

22 Q Was it ever a 900 Hz Tone?

23 A To the best of my knowledge, it has been anywhere  
24 between 909.9999 and 911 based upon just Aaron creating a  
25 frequency, but indistinguishable to the ear of the tone.



1           So the tone audibly has always come across as 911  
2 or -- at that particular frequency pitch.

3           Q   Was there any reason to select that range, 910 to  
4 911, as opposed to another frequency range for this tone?

5           A   It is my understanding that the frequency  
6 generator originally used in the MTX 300T was such that it  
7 could generate a frequency of 150, and they selected a  
8 six-times multiplier of that because of the estheticness of  
9 the tone.

10          Q   How did you learn this information?

11          A   This was again speaking with Marlon and with  
12 Mitch Leshim.

13          Q   So why -- if the frequency generated 150 hertz,  
14 911 is not a six-times multiplier of 150.

15          A   There is error to the -- to the item, and that's  
16 how it -- it's my understanding that's how they got to that  
17 frequency point.

18          Q   So is it -- was it designed to be 900 Hz, is that  
19 what you are saying?

20          A   No, it was -- it was designed to be -- the  
21 frequency generator is not explicitly 150. It's 150 point  
22 something such that when it multiplies out, it starts  
23 getting higher.

24                It was an understood tool of the time so they  
25 were able to identify what the frequency was going to be.

1           Q   Now, the third one is called the Call Back. Is  
2   that the 911 Hz Tone?

3           A   Correct, it is.

4           Q   And it's described as, "Three short, high pitched  
5   di-di-dit, indicate channel availability". Do you see that?

6           A   Yes, I do.

7           Q   And if you turn over to the next page on the  
8   left-hand side, Page 14 of the manual, there is a Talk  
9   Permit listing that says "Same as call back"?

10          A   Correct.

11          Q   Now, -- and that's the 911 Hz Tone as well?

12          A   Correct.

13          Q   Now, there is no reference to 911 Hz in this  
14   document, is that right?

15          A   I have not fully reviewed the document, but it's  
16   my assumption that it is referenced as the Talk Permit or  
17   the Call Back tone.

18          Q   And these two tones are in a list of other  
19   audible tones.

20          A   Yes.

21          Q   And it looks to me like there are 23 of them in  
22   all.

23          A   Correct.

24          Q   Okay. And are all those tones different from  
25   each other?

1           A    It is my understanding, based upon interaction  
2   with user guides, that if the tone is the same, it would  
3   stipulate that it is the same between the indications of  
4   what the tone means.

5           Q    Okay.  As it does with Talk Permit?

6           A    Yes.

7           Q    Okay.  If you look below Call Back on 321, there  
8   is Clear Mode Transmit is the next one in alphabetical order  
9   and that's described as a high pitched beep, do you  
10   see that?

11          A    Yes, I do.

12          Q    Now is that beep also at 911 Hz?

13          A    I cannot answer that question.  I have not spent  
14   time investigating that particular tone.

15          Q    Are any of the other tones emitted by this radio  
16   -- for these purposes -- emitted at the frequency of 911 Hz?

17          A    I cannot answer the question.  I am not -- I've  
18   not researched these tones enough to verify the exact  
19   frequency they operate on.

20          Q    Were all of the tones emitted by the first  
21   product in this line, the 300T, multiples of 150 hertz?

22          A    It is my understanding from discussions that they  
23   were multiples of 150 Hz -- or 150 points, whatever Hz.

24          Q    150 plus or minus?

25          A    Correct.

1 Q Do you know -- so that presents a somewhat  
2 limited number of potential frequencies at which tones could  
3 be generated, correct?

4 A I believe multiples of 150 Hz.

5 Q Do you know whether any of the other tones in  
6 that radio were at 911 Hz?

7 A Again, I would have to go back and investigate  
8 that particular -- if those tones are consistent, they  
9 should be the same as -- the tones that were in existence in  
10 that product should be consistent with the tones that are  
11 described here in this product.

12 Q Because of your intention to make sure that there  
13 was consistent use across successive products?

14 A Correct.

15 Q And the STX 800 is a successor to the MTX 300T?

16 A Correct, it is.

17 Q Have you looked -- have you looked at any of the  
18 other tones emitted by these 911 Hz Tone products in terms  
19 of analyzing their frequency and cadence and the like?

20 MR. WILLIAMS: Objection, that's vague.

21 A I have not investigated these tones in reference  
22 to 911 -- the 911 Hz Tone.

23 BY MR. STEWART:

24 Q Have you investigated what frequency the other  
25 tones are emitted at?

1           A    No, I have not. I have not investigated the  
2 other frequencies these tones are emitted at.

3           Q    Does the fact that the -- that the first four  
4 tones there or maybe five tones are identified as  
5 "high-pitched" suggest that they are all the same frequency?

6           MR. WILLIAMS:   Objection, that's vague.

7           BY MR. STEWART:

8           Q    Are you able to answer that question. I'm sorry,  
9 I meant to ask you to go ahead and answer.

10          A    It would be presumptuous for me to identify what  
11 intention or what perception a radio would have.

12          Q    Do you know from your actual use of these -- or  
13 experience with these 911 Hz -- I'm sorry.

14                You have actually used 911 Hz Tone product  
15 radios, have you not?

16          A    Yes, I have.

17          Q    Are you familiar based on that experience with  
18 whether more than the Call Back tone is emitted at 911 Hz?

19          A    I cannot say whether more than the Call Back and  
20 Tone Permit tone are at 911 Hz. They are the most often  
21 heard tones that I have in interacting.

22          Q    Do they -- just in terms of frequency alone, do  
23 other tones sound like the same frequency as the Call Back  
24 tone?

25          A    It's difficult to answer because of the different

1 cadences of the tones.

2 Q You can't distinguish between the cadence and the  
3 frequency of a tone?

4 A No, the tones are of X -- frequency X pitch. A  
5 majority of the time, I'm not utilizing the features that  
6 interact with other of these tones, or I am just  
7 particularly not paying attention when they come in such  
8 that I would be monitoring whether they are the same tones.

9 Q Is it possible that multiple tones use the same  
10 frequency on these products?

11 MR. WILLIAMS: Objection, vague.

12 A I do not know.

13 MR. STEWART: Next I would like to have marked as  
14 Klein Exhibit 4 another user manual.

15 (Klein Deposition Exhibit  
16 No. 4 was marked as  
17 requested.)

18 BY MR. STEWART:

19 Q If you would turn first to the page marked  
20 000269. On the left-hand side, there, page eight of the  
21 manual, there is the Talk Permit and the Call Permit -- I'm  
22 sorry -- Call Back alert tones there as well, do you see  
23 that?

24 A Yes, I do.

25 Q And is that the 911 Hz Tone that we are talking

1 about here?

2 A The Talk-Permit tone?

3 Q Yes.

4 A Yes.

5 Q And Call Back also?

6 A Yes.

7 Q And it is described slightly differently from the  
8 previous manual that we looked at, do you see that?

9 A It is -- it is "Dih-dih-dit". The description  
10 specifically -- I need some clarification on the exact --

11 Q It's slightly different, don't you think?

12 A The description of the tone?

13 Q Yes.

14 A There is. There is a greater amount of verbiage  
15 on the second.

16 Q And the second one is the MTX 800. Do you know  
17 where that fits in terms of time? There is not a copyright  
18 date on this one -- vis-a-vis the STX 800?

19 A It is my recollection that the MTX 800 was the  
20 follow-on to the STX products.

21 Q Okay. And over on the page 000271 --

22 A Excuse me, which page?

23 Q 000271, a couple of pages later, under -- in the  
24 upper left-hand side of the page, "Making Dispatch Calls",  
25 that is a description, is it not, of the generation of the

1 911 Hz Tone that we have been talking about?

2 A Yes, it is.

3 MR. STEWART: Okay. Now, one more user manual. I  
4 would like to mark this as Klein Exhibit 5.

5 (Klein Deposition Exhibit  
6 No. 5 was marked as  
7 requested.)

8 MR. STEWART:

9 Q Now, this has a copyright date on the second page  
10 -- no, where is it.

11 MR. WILLIAMS: I think you gave me something extra  
12 here. This isn't part of 5.

13 MR. STEWART: Thank you.

14 A What page are you on?

15 BY MR. STEWART:

16 Q It actually on 2207. There is a 2003 copyright  
17 date.

18 A 2207?

19 Q Right.

20 A There is a 2003 copyright, correct.

21 Q Now, is this a current product?

22 A This is a currently shipping product.

23 Q Do you know whether this is the current user  
24 guide for this product?

25 A This is the current user guide, to the best of my



1 knowledge, specific to the Project 25 version of this  
2 product.

3 Q And what is Project 25?

4 A It is a -- the open -- it's an organization that  
5 has helped to define the APCO communication standard that we  
6 have branded as Astro for our features and functions that  
7 support that standard.

8 Q And that standard is an interoperability  
9 standard, is that right?

10 A It is an open protocol, so it does create  
11 interoperability.

12 Q Now, if you turn to 2215, which is page six of  
13 the guide, you see here we have the list of tones again?

14 A Correct.

15 Q This one is different because it is -- the tones  
16 are grouped together with -- under a "Sound" description, do  
17 you see that?

18 A Yes, I do.

19 Q If you turn over to the page labeled 2217 which  
20 is page eight of the user guide --

21 A Correct.

22 Q Do you see under "Sound" it says, "A Group of  
23 Medium-pitched Tones", do you see that?

24 A Yes, I do.

25 Q And Talk Permit is one of those tones?

1 A Yes, it is.

2 Q Now, does that mean that the -- that the  
3 frequency of the tone was changed in this product?

4 A No, it was not.

5 Q But it's described as medium-pitched as opposed  
6 to high-pitched here?

7 A Yes, it is.

8 Q Do you know why that is?

9 A It's my understanding -- and this is strictly  
10 based upon personal experience in helping to work on these  
11 manuals -- that there was an attempt to help organize these  
12 tones so that it was easier to reference.

13 Q And they were thus grouped by -- I guess for this  
14 purpose, it's the pitch or frequency, right, the group of  
15 medium-pitched tones, is that right?

16 A And a majority of these tones are grouped in that  
17 manner.

18 Q And for the group of medium-pitched tones that  
19 includes the Talk-Permit tone, do you know whether all of  
20 those tones used the same frequency?

21 A I cannot at this point say.

22 Q You are presenting this to a user as a group of  
23 tones that are related in terms of their pitch, is that  
24 right?

25 A Yes, we are.

1           Q    I think we talked earlier this morning about the  
2   911 Hz products being trunking-based voice services for  
3   which that particular type of availability, channel  
4   availability message was appropriate, and I guess rather  
5   than my saying that, I will take your limitation. That's  
6   right. We are talking about trunked voice systems.

7           A    Okay. Of competitors that operate on a trunked  
8   voice system, there is E. F. Johnson, there is Macom, there  
9   is Kenwood, there is Icom, there is Vertex; there is  
10  probably going to be more competitors in the future, and  
11  there is probably competitors in the past.

12                But of the ones that are primary competitors, I  
13  believe it's those five.

14           Q    And does each of those five sub products that  
15  include a -- a Talk-Permit tone or a Call-Back tone?

16           A    It would be my assumption that those products  
17  would require some type of indication to notify the user  
18  that take either the channel is available or that the mike  
19  is active.

20           Q    I think we talked before, but let's confirm it  
21  here. Have you done any investigation to determine whether  
22  any of the products of any of those five companies produce  
23  a 911 Hz Tone?

24           A    Currently we are investigating the audio and  
25  other aspects of those devices. Due to the nature and

1 requirements of how you have to configure the products, we  
2 are working through some details.

3 Right now we do not have elements that are  
4 working, say, from Macom or Kenwood, or of these other  
5 competitors that we do have.

6 Q I'm sorry, I don't understand your answer.

7 A The radio needs to be operating on a system such  
8 that you have an opportunity to be in a situation where the  
9 radio would generate that tone.

10 And currently we are working through some issues  
11 to actually get the radio we do have up on a system so we  
12 can validate the performance.

13 Q Okay. So you do have two-way radio devices from  
14 those five manufacturers?

15 A We do.

16 Q And you are unable to perceive tones generated by  
17 those products?

18 A Currently we are now focusing on that aspect.

19 Q And what is the purpose of your investigation of  
20 those devices?

21 MR. WILLIAMS: Objection to the extent your answer  
22 will require you to divulge communications between you and  
23 your lawyers.

24 A We have spent time identifying the robustness of  
25 the physical products. We are now evaluating the

1 performance of these products, and these would include any  
2 tones it generates, response on a system, and overall radio  
3 performance.

4 Q And that is yet to be accomplished as you have  
5 said, correct?

6 A Correct.

7 Q And to your knowledge, has Motorola engaged in  
8 any -- in an investigation of those performance  
9 characteristics of competitors' two-way radios before now?

10 A It is an ongoing -- it is an ongoing process. We  
11 have had previous products that we focus on the durability.

12 We are now trying to establish operational  
13 performances. But we also have -- when working on user  
14 systems that have a mix of products, we are -- they are  
15 evaluating their performance.

16 Q Do these products have an array of features or  
17 functionalities that would require them to have multiple  
18 different tones as the 911 Hz Tone products we looked at  
19 earlier today?

20 A It would be my assumption, and I would consider  
21 this a reasonable assumption that it would generate  
22 different tones.

23 We have certainly heard different tones not in a  
24 trunked operation, but different tones come from the device.  
25 So I think it would be a fine assumption to say that it

1 would produce multiple tones while operating in that mode.

2 Q How have you heard different tones coming from  
3 the device?

4 A Powering the device on, entering menus,  
5 interaction with the devices.

6 Q And how did you acquire those devices?

7 A Through purchase.

8 Q Is it possible then to purchase a device, one of  
9 these two-way radio devices, without having them  
10 operational?

11 A Can you clarify.

12 Q Well, you said that you are not able to make them  
13 make the -- the call-back tone at this point, is that right?

14 A You can purchase a product that is not configured  
15 to operate on a system such that you could observe its  
16 performance on a trunk system.

17 They would still operate. You could make it  
18 operate without any type of restriction in a unit-to-unit  
19 perspective, but operation on a trunked system does require  
20 security methods that are applied for configuration for a  
21 particular system. That's done on the user's behalf for  
22 security.

23 Q Okay. And the Talk-Permit tone and the Call-Back  
24 tone are only accessible in a trunked operation mode, is  
25 that right?

1           When you try again, if the channel is still  
2 available, you will again hear your Talk-Permit tone. The  
3 radio says here is -- I'm playing you this tone to tell you  
4 that the microphone is available for you, please start  
5 communicating.

6           Q    In this situation at a trade show, when potential  
7 customers were using the phone and they could hear the  
8 Talk-Permit tone, was that always in connection with the  
9 actual operation of the Talk-Permit function?

10          MR. WILLIAMS:   Objection, that's vague.

11          A    Yes.

12          BY MR. STEWART:

13          Q    Let me ask it this way:  When you push the button  
14 and you heard the tone, that's because the -- the channel  
15 function was working, is that right?  The communication  
16 channel open function was working?

17          A    The Talk-Permit tone from its inception has  
18 always indicated that when you hear this tone, you are being  
19 told that either there is a channel available for you now,  
20 or that the channel has been -- you know, essentially you  
21 have the channel.  The microphone is active.  You can now  
22 speak.

23          Q    And were there times -- are there times, I'm  
24 sorry, when the tone is heard and that's not the case?

25          A    No.  The tone is specific to -- the sound is

1 specific to those events.

2 Q Was the 911 Hz Tone -- I'm sorry.

3 Let me -- in the context you've described earlier  
4 in which a sales rep would go to a customer facility, how  
5 then would that work? How would the tone be demonstrated in  
6 that context?

7 A There is a -- several different ways that that  
8 could be established. The basics do not change. The radio  
9 needs to be configured to operate on the system.

10 The sales individual can either work with the  
11 customer to configure the radio on sites; the customer would  
12 have the pertinent security method to insure the radio got  
13 configured.

14 The sales individual could work with a support --  
15 a staff support company. Not all companies service their  
16 own products. They will have an outside company service  
17 those products.

18 They could work with that service provider to  
19 configure it appropriately and, then, work with the  
20 customer.

21 As long as the configuration is completed  
22 properly, operation will occur.

23 Q And in that context as well, is it the case that  
24 when you hear the tone, it's because the channel open  
25 function is working?



1           A    Again, the tone has always been in reference to  
2   either the call-back availability or of the microphone  
3   active and communications occurring.

4           MR. STEWART:  I would like to have marked as Klein  
5   Exhibit 8 an advertisement that was provided to us in  
6   discovery.

7                               (Klein Deposition Exhibit  
8                               No. 8 was marked as  
9                               requested.)

10          A    Okay.

11          BY MR. STEWART:

12          Q    Do you recognize this document?

13          A    I recognize it as the Astro XTS 3000  
14   specification sheet.  I have seen this document before.

15          Q    Where have you seen it?

16          A    In my daily job functions.

17          Q    Is this something you provide to potential  
18   customers?

19          A    If requested, yes.

20          Q    What is the purpose of it?

21          A    This document, to the best of my understanding  
22   and my use of this document, is to identify the form  
23   factors, the overall form of the products, weights,  
24   durability, ruggedness, frequency, supports, and high level  
25   protocol supports of products.

1 publications. This was a document -- an informational  
2 element that I have used, and I am familiar with others who  
3 have used this at trade shows and also as customer  
4 literature.

5 Q How do you use it at trade shows?

6 A When requests come in about the durableness of  
7 the products and when they have keen interest in  
8 significantly more robust products than our current lines  
9 for ones that are submersible, marine patrol customers, as  
10 such.

11 Q Can you tell me whether there is any mention made  
12 of the 911 Hz Tone in this advertisement?

13 A No, there is not mention of any features that I  
14 can tell from what I'm seeing, beyond the form factor  
15 itself.

16 Q What do you mean when you say "form factor"?

17 A Large knobs set further apart, large push to talk  
18 button, large uncramped keypad, large display, robustness,  
19 submersibility, it's light, it's more visible.

20 Q Are you aware of any -- let's start with print  
21 advertising -- used by Motorola with respect to 911 Hz  
22 products that mentions the 911 Hz Tone?

23 A Print?

24 Q Yes.

25 A I'm not aware of any print advertisement that

1 explicitly states the 911 Hz Tone. Well, let me rephrase  
2 that.

3 We say print, beyond -- you know, when you say  
4 advertisements, this could be advertisements. Beyond the  
5 manuals that it's printed in, beyond the training  
6 information it's printed in, beyond those types of  
7 discussion, direct discussion of the Talk-Permit tone, if  
8 you are referring specifically to an ad in a magazine, I'm  
9 not aware of an ad in a magazine that specifically states  
10 the 911 tone.

11 Q Your reference to user manuals was to the kinds  
12 of information we saw in Exhibits 3, 4 and 5, is that right?

13 MR. WILLIAMS: Let me get those for him,  
14 please.

15 BY MR. STEWART:

16 Q Yes.

17 A I stipulated these manuals that reference the  
18 Talk-Permit tone; also training information that references  
19 the Talk-Permit tone, and other items.

20 Q I want to go one by one. The user manuals you  
21 referred to are these -- are like these exhibits that we  
22 reviewed previously, is that right?

23 A Yes.

24 Q And the references to the tones were the ones  
25 that we looked at ourselves in looking at these user

1 sound of the Talk-Permit tone, and then that is either  
2 singular solo training of the customers themselves, end  
3 users, or there are trainers that work with the customers  
4 and that material such that the same -- the same  
5 functionality and the training of understanding the -- these  
6 tones and their meanings are accomplished.

7 So there is a -- those are the -- in my  
8 understanding, and I easily could be potentially missing out  
9 some opportunities, but those are my understanding of the  
10 different opportunities that we deliver and speak with a  
11 customer directly about the tone.

12 Q And, first, when you are talking about live  
13 trainers, a live trainer would use the tone for the purpose  
14 of demonstrating the operation of the channel-open feature,  
15 is that right?

16 A Correct.

17 Q Or function. With respect to the computer  
18 training, we were handed this morning by counsel for  
19 Motorola a box of documents that we hadn't seen before, plus  
20 two CD-ROM discs which appear to include a video and a  
21 PowerPoint training program of some sort.

22 Do you know that document?

23 A I am -- if it is what I think it is, I -- or the  
24 training information I have seen in the past, I have some  
25 familiarity with it. But I'm making an assumption that's

1           A    It's a table that lists the Talk-Permit tone and,  
2 then, a button that you press that it plays the tone.

3           Q    And it's not a series of tones that you play for  
4 your amusement and edification but, instead, an illustration  
5 or demonstration of what it sounds like when you push the  
6 Push-to-Talk button, is that right?

7           A    Correct, I mean, it is specific to -- upon  
8 pressing this icon or button, you hear specifically that  
9 tone.

10          Q    Okay. Now, has Motorola -- we talked first about  
11 the print ads that might run in magazines, and you've talked  
12 -- we have talked about those previously.

13                Has Motorola advertised 911 products in other  
14 media other than print media?

15          A    I am unaware of -- because we go through  
16 procurement officers and things like that, the advertising  
17 is focused to avenues of such customers.

18                So that would include the trade shows, the  
19 promotions and interactive items.

20                I am not aware of any radio or TV ad that  
21 specifies a 911 Hz Tone.

22          Q    So you mentioned a list of ways in which  
23 customers -- potential customers might hear the 911 Hz Tone  
24 before -- and I'm going to list then for you here. One was  
25 training?

1 A Uh hum.

2 Q One was mentioned in user guides?

3 A Uh hum.

4 Q A third --

5 MR. WILLIAMS: Say "yes" or "no".

6 A Yes.

7 BY MR. STEWART:

8 Q A third was heard at trade shows?

9 A Yes.

10 Q A fourth was a sales rep who demonstrates the  
11 product at the customers's facilities?

12 A Yes.

13 Q And a fifth was in effect when you use the  
14 product, it's got -- it makes the tone while at the same  
15 time being labeled a Motorola product?

16 A Yes, it does.

17 Q Now, are there other ways in which potential  
18 customers could have heard the 911 Hz Tone?

19 A Yes.

20 Q How?

21 A If a customer is in the field with another  
22 customer of -- with overlapping coverage of systems, they  
23 could easily be with somebody who utilizes their Motorola  
24 radio, and they could easily hear the 911 Hz tone.

25 A significant number of customers would have

1 systems such that the police would be on one system,  
2 potentially the fire could be on another, and there would be  
3 numerous occasions where that tone would be played to people  
4 who do not actually either carry a Motorola product or  
5 operate on that system.

6 Q So they would hear it as it was being operated by  
7 somebody who actually had already purchased the product?

8 A Yes, or who had authority. There are times  
9 where, in times of crisis and need, Motorola does supply a  
10 system, and we supply branded Motorola products to help out  
11 in times of need.

12 And there would be a situation where they could  
13 easily hear the tone as they are operating on those  
14 products.

15 Q Okay. And is that different -- I had considered  
16 those kinds of situations to be like the fifth example that  
17 you gave me, which was, you use a Motorola phone, it's got  
18 Motorola on it -- I'm sorry, not phone but radio. You use  
19 it and it's got a Motorola label on it.

20 A Correct, they are -- they are very similar, the  
21 distinction being whether the user actually -- it is their  
22 product, or if they are actually observing somebody use it,  
23 or if it's not their product, but they have been given this  
24 Motorola radio to operate in a time of need.

25 Q Okay. Any other ways in which that would happen

1 -- in which a potential customer would hear the 911 Hz  
2 Tone?

3 A To the best of my knowledge, beyond -- and just  
4 for clarification, on the trade shows, they are trade shows  
5 that are open, or they are Motorola sponsored trade shows  
6 where we go out and visit customers or groups of customers  
7 to exhibit our products.

8 To the best of my knowledge, that I can recall, I  
9 believe those are the -- those are the instances where a  
10 customer would hear that 911 Hz Tone.

11 MR. STEWART: I would like to have marked as  
12 Exhibit 12, Applicant's Response to Opposer's First Set of  
13 Interrogatories to Applicant.

14 (Klein Deposition Exhibit  
15 No. 12 was marked as  
16 requested.)

17 A Okay.

18 BY MR. STEWART:

19 Q Have you seen this document before?

20 A I have seen this document before.

21 Q I would like you just to turn to page seven and  
22 look at the response to Interrogatory Number 14 which goes  
23 over onto page nine.

24 A Okay.

25 Q Did you assist in producing this list of trade



1 those fall into the category of enterprise customers?

2 A By the description of DistribuTECH,  
3 TechAdvantage, some of those, I'm going to draw the  
4 conclusion that they are -- they are enterprise based  
5 customers.

6 MDUG is our Data Users Group which I have some  
7 working familiarity with.

8 Some of these other items that are -- Navy, Army,  
9 and some other elements such as those, I know that we do  
10 have interactions with them from a federal -- federal  
11 discussion and federal trade shows, but I have not worked  
12 with those organizations.

13 The ones that define themselves as APCO or MTUG,  
14 Print Track, and any of the Motorola specific meetings,  
15 these are all ones that I have working familiarity with.

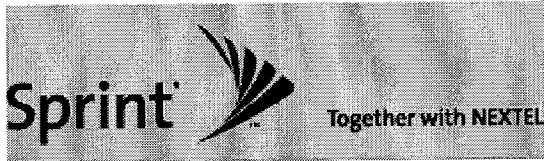
16 Q Now, at any of those trade shows, are you aware  
17 of any instance in which Motorola featured the 911 Hz Tone  
18 other than in connection with the operation of the function  
19 that it signifies?

20 A I'm not aware of any other -- any other  
21 presentation of that tone.

22 Q Now, are 911 Hz Tone products offered for sale  
23 through other channels of trade such as retail or mail or  
24 Internet?

25 A It is my understanding that to purchase a new

**Opposer's Exhibit 5**



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**Disaster Support:** Provides wireless equipment and services to emergency and disaster recovery personnel during declared emergencies in both urban and rural environments.

**Field Training Support:** Provides daily use of wireless equipment and services for short-term needs such as training and field exercises.

**Agency Specific Event Support:** Provides a single agency's narrow requirements for wireless equipment and service to support limited-duration events.

**Mobile Cellular Sites, Portable Microwave Facilities and Ruggedized Handsets:** Provides customers' existing systems with a secure and stable communications platform that is interoperable with other private radio networks.

**Agency Service Center Training:** Gives you the capability to service and repair phones by adding to the skills of your current staff.

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**Priority Connect.** This service puts your Nextel® Walkie-Talkie call ahead of others, increasing the likelihood of getting connected during times of network congestion.

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For the most physically demanding environments, Nextel offers the i325 IS, which meets military standard 810 C/D/E for resistance to vibration, mechanical shock, rain, and dust. The i325 IS is equipped with the red Nextel® Emergency Group Walkie-Talkie button, an exclusive service for public safety agencies. It also features a fixed antenna, rubber-molded grips and speakerphone.

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Please contact a Government Account Manager for more information on price plans, handsets and services.

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**Opposer's Exhibit 6**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

NEXTEL COMMUNICATIONS, INC.,	)	
	)	
Opposer,	)	
	)	Opp. No.: 91161817
v.	)	App. No.: 78/235,618
	)	Mark: Sensory Mark
MOTOROLA, INC.,	)	(911 Hz tone)
	)	
Applicant.	)	
	)	

**APPLICANT'S RESPONSE TO OPPOSER'S  
FIRST SET OF INTERROGATORIES TO APPLICANT**

Applicant responds to Opposer's First Set of Interrogatories to Applicant as follows.

The "General Objections" set forth in Applicant's Response to Opposer's First Request of Applicant for Production of Documents and Things are incorporated herein by reference.

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify each related entity (including subsidiaries, parent companies, and other related companies) of Opposer that sells products or offers services that feature or are associated with the 911 Hz Tone.

**RESPONSE TO NO. 1:**

Subject to the General Objections set forth above, Applicant is unaware of any related entity of Opposer that sells products or offers services that feature or are associated with the 911 Hz Tone.

**INTERROGATORY NO. 2:**

Identify the person(s) with knowledge of the selection and adoption, and integration into Applicant's business of the 911 Hz Tone (past and present), and identify all documents that relate to such selection, adoption, and integration of the 911 Hz Tone.

**RESPONSE TO NO. 2:**

Subject to the General Objections set forth above, Applicant is presently unable to identify the requested person(s) because of the length of time that has passed since Applicant first selected, adopted, and integrated the Tone into Applicant's business. Also subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 3:**

Identify all documents relating to surveys, research reports, clearance reports, or other evaluations obtained or performed by Applicant, its agents, and third parties with regard to the 911 Hz Tone.

**RESPONSE TO NO. 3:**

Subject to the General Objections set forth above and subject to the specific objection that the term "other evaluations" is vague and ambiguous, Applicant will produce business records that are responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P., although no surveys or clearance reports exist.

**INTERROGATORY NO. 4:**

Describe in detail the meaning and significance of the 911 Hz Tone (including the selection of the frequency and the timing of the components of the same) with respect to Applicant's products, and identify all documents relating to same said meaning and significance.

**RESPONSE TO NO. 4:**

Subject to the General Objections set forth above, the 911 Hz Tone has no meaning or significance apart from signifying the source of Applicant's goods/services. Also subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 5:**

Describe in detail the manner in which the 911 Hz Tone is or has been affixed to any goods (including the 911 Hz Tone Products), and identify all documents that evidence said affixation.

**RESPONSE TO NO. 5:**

The 911 Hz Tone is affixed to Motorola's two-way radios and cellular telephones through an electronic chip resident in the device and from which the sound originates and emanates. Also subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.



**INTERROGATORY NO. 6:**

Describe in detail the manner in which Applicant purports to use or have used the 911 Hz Tone in commerce, and identify all documents that evidence said use.

**RESPONSE TO NO. 6:**

Subject to the General Objections set forth above, Applicant has used the 911 Hz Tone in commerce by, among other things, offering to sell and selling two-way radios and cellular telephones that contain the chip referred to above (*see* Response to No. 5) and from which the Tone can be heard. Also subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 7:**

Describe in detail how the 911 Hz Tone purportedly is used or has been used to promote the 911 Hz Tone Products to customers (including the dates of said promotions), and identify all documents that evidence said promotions.

**RESPONSE TO NO. 7:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 8:**

Identify all instances (by media form, title, date(s), page(s), issue(s), and such other identifying information as used by Applicant) in which Applicant advertised, advertises, or plans to advertise, promoted, promotes, or plans to promote the 911 Hz Tone Products in commerce.

**RESPONSE TO NO. 8:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 9:**

State the respective dollar amounts Applicant has expended, by year, in connection with the promotion and advertising of the 911 Hz Tone Products in each medium identified in response to the preceding Interrogatory and by all other means not so identified, and identify all documents that evidence said expenditures.

**RESPONSE TO NO. 9:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 10:**

Identify all instances (by media form, title, date(s), page(s), issue(s), and such other identifying information as used by Applicant) in which Applicant advertised, advertises, or plans to advertise, promoted, promotes, or plans to promote, used, uses, or plans to use the 911 Hz Tone in commerce.

**RESPONSE TO NO. 10:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as being duplicative of Interrogatory No. 8, and Applicant incorporates herein its Response to No. 8.

**INTERROGATORY NO. 11:**

State the respective dollar amounts Applicant has expended, by year, in connection with promotions and advertising featuring the 911 Hz Tone in the promotion and advertising of the 911 Hz Tone Products in each medium identified in response to the preceding Interrogatory and by all other means not so identified, and identify all documents that evidence said expenditures.

**RESPONSE TO NO. 11:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as being duplicative of Interrogatory No. 9, and Applicant incorporates herein its Response to No. 9.

**INTERROGATORY NO. 12:**

Identify, by product or model name and number or any other identifying information used by you, each product that has incorporated, incorporates or will incorporate the 911 Hz tone.

**RESPONSE TO NO. 12:**

Subject to the General Objections set forth above, Applicant identifies the following models:

MTS 2000	XTS3000	M500J	MTX Classic 800/900 PP
MTX8000	LTS 2000	Maxtrac PP 800,900 U.V.	MTX 8000/9000 PP
MTX 9000	LCS 2000	Maxtrac LS LTR	MTX LS
MTX838	XTS 5000	Maxtrac Duplex	STX
Visar	XTS 2500	Spectra PP	VISAR PP
MCS2000	XTS 1500	Coverage+ (Simplex)	GTX PP
ASTRO Saber	XTL 1500	Coverage+ (Duplex)	GTX LS
ASTRO Spectra		GTX PP	P1225 LS
		GTX LS LTR	HT1250 LS
		M1225 LS UHF	HT750 LS UHF
		CDM 1550 LS	CT450 LS UHF
		CDM 1550 LS+ UHF	MTX150 PP (PRO5650)
		CDM 1550 LS+ 200	MTX450.MTX4500 PP

CDM 1550 LS+ 700

MTX8250.MTX850 LS  
MTX8250.MTX 850 PP  
MTX9250.MTX950 PP  
HT1250 LS+ UHF  
HT1250 LS+ 200  
HT1250 LS+ 700

**INTERROGATORY NO. 13:**

Identify all of Applicant's annual sales information (including model number and customers) for all products incorporating the 911 Hz Tone (including the 911 Hz Tone Products) in the United States since the purported date of first use of the 911 Hz Tone, and identify all documents that reflect such sales.

**RESPONSE TO NO. 13:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 14:**

Identify all trade shows where Applicant has used the 911 Hz Tone for each of the past five (5) years, and identify all documents relating to said use.

**RESPONSE TO NO. 14:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P., and identifies the following trade shows:

DistribuTECH 2005

AFCEA West

Major City Chiefs

TechAdvantage 2004 (NRECA)

NACO's Legislative Conference  
State & Provincial Conference  
National Postal Forum  
Navy League - Sea Air Space  
FOSE  
IWCE  
NFBPA  
FDIC  
ENTELEC  
PTI  
North Central Regional APCO  
East Coast Regional APCO  
Metropolitan Fire Chiefs Conference  
ACFEA International  
UTC  
UTC-regional  
LEIM - IACP  
RSSI (Railway Systems Suppliers Inc.)  
MDUG  
NENA  
NSA  
NACo  
NOBLE Annual Conference  
IAFC  
NCSL  
APCO  
AFCEA Army DOIM  
NASTD  
NGAUS

AMRA  
IACP  
ICMA  
Printrak Users Conference  
AUSA Annual MTG  
Canadian APCO  
NASCIO formerly NASIRE  
HAPCOA  
Printrak Users Conference  
AFCEA TechNet AsiaPac  
CE & IESS Supplier Conference (CE)  
Financial Analyst Meeting  
Motorola Officers' Business Meeting  
Shareholder Meeting  
NOBLE / CEO Symposium, and  
West Cost Regional APCO.

**INTERROGATORY NO. 15:**

Describe in detail the means by which Applicant or its distributors or agents have offered, are offering, or will offer to sell 911 Hz Tone Products, and identify all documents relating to said attempts.

**RESPONSE TO NO. 15:**

Subject to the General Objections set forth above, Applicant responds that the 911 Hz Tone Products are sold through a direct sales force to the end-user/customer and through dealers' or manufacturer's representatives. Also, subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 16:**

Identify Applicant's five (5) major competitors for the 911 Hz Tone Products in the United States, and identify all correspondence or communications with same that relate to trademarks.

**RESPONSE TO NO. 16:**

Subject to the General Objections set forth above, Applicant identifies: MA/Com, Kenwood, EF Johnson, Icom, and Vertex. Also, subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.

**INTERROGATORY NO. 17:**

Identify all prior and current third-party uses of the 911 Hz Tone of which Opposer has knowledge, and identify all documents relating to said uses.

**RESPONSE TO NO. 17:**

Subject to the General Objections set forth above, none.

**INTERROGATORY NO. 18:**

Provide all internet domain name addresses for web sites of Applicant that feature the 911 Hz Tone (including those directed to the 911 Hz Tone Products).

**RESPONSE TO NO. 18:**

Subject to the General Objections set forth above, all products and services offered by Applicant are accessible through [www.motorola.com](http://www.motorola.com).

**INTERROGATORY NO. 19:**

Identify and describe the channels of trade through which the 911 Hz Tone Products were, are, or will be promoted, offered for sale and sold to customers, and identify all documents that reflect use in said channels of trade.

**RESPONSE TO NO. 19:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as being duplicative of Interrogatory No. 15, and Applicant incorporates herein its Response to No. 15.

**INTERROGATORY NO. 20:**

Identify all licensing activity related to the 911 Hz Tone, and identify all documents that reflect such licensing activity.

**RESPONSE TO NO. 20:**

Subject to the General Objections set forth above, none.

**INTERROGATORY NO. 21:**

Identify all reviews (by media form, title, date(s), page(s), issue(s), and such other identifying information as used by Applicant) by third parties of the 911 Hz Tone or the 911 Hz Tone Products.

**RESPONSE TO NO. 21:**

Subject to the General Objections set forth above, Applicant will produce business records responsive to this Interrogatory, in accordance with Rule 33(d), Fed. R. Civ. P.



**INTERROGATORY NO. 22:**

Identify all instances of actual confusion relating to the 911 Hz tone.

**RESPONSE TO NO. 22:**

Subject to the General Objections set forth above, none.

**INTERROGATORY NO. 23:**

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories separately by interrogatory, and state specifically with reference to interrogatory number the area of participation of each such person.

**RESPONSE TO NO. 23:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as it invades the attorney-client privilege and the work product immunity doctrine.

**INTERROGATORY NO. 24:**

Identify each person whom Applicant expects or intends to call as a witness to present evidence in the above-captioned opposition proceeding (including expert witnesses).

**RESPONSE TO NO. 24:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as being premature.

**INTERROGATORY NO. 25:**

What do you contend are the facts and the law as applied to the facts that support the allegations in your answer to Paragraph 9 of the Notice of Opposition?

**RESPONSE TO NO. 25:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as it invades the work product immunity doctrine.

**INTERROGATORY NO. 26:**

What do you contend are the facts and the law as applied to the facts that support the allegations in your answer to Paragraph 10 of the Notice of Opposition?

**RESPONSE TO NO. 26:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as it invades the work product immunity doctrine.

**INTERROGATORY NO. 27:**

What do you contend are the facts and the law as applied to the facts that support the allegations in your answer to Paragraph 11 of the Notice of Opposition?

**RESPONSE TO NO. 27:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as it invades the work product immunity doctrine.

**INTERROGATORY NO. 28:**


What are the facts and the law as applied to the facts that you contend support each affirmative defense you allege in your answer to the Notice of Opposition?

**RESPONSE TO NO. 28:**

In addition to the General Objections set forth above, Applicant objects to this Interrogatory as it invades the work product immunity doctrine.

As to objections:

Dated: April 12, 2005

  
\_\_\_\_\_  
John T. Gabrielides  
Elisa M. Valenzona  
BRINKS HOFER GILSON & LIONE  
455 N. Cityfront Plaza Drive, Suite 3600  
Chicago, Illinois 60611-5599  
Telephone: (312) 321-4200  
Facsimile: (312) 321-4299

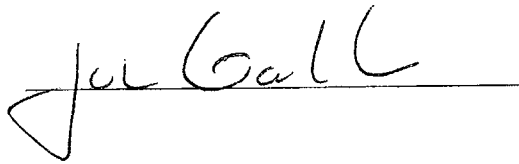
Attorneys for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on counsel for Opposer on April 12, 2005, by sending same via First Class Mail, postage prepaid, and via email to:

Michael H. Jacobs  
Crowell & Moring LLP  
1001 Pennsylvania, Avenue, N.W.  
Washington D.C. 20004

mjacobs@crowell.com

A handwritten signature in cursive script, appearing to read "Julie Gall", is written over a horizontal line.

**Opposer's Exhibit 10**

NEXTEL COMMUNICATIONS, INC.,	)		
	)		
Opposer,	)		
	)	Opp. No.:	91/161,817
v.	)	App. No.:	78/235,618
	)	Mark:	Sensory Mark
MOTOROLA, INC.,	)		(911 Hz tone)
	)		
Applicant.	)		
	)		

Applicant responds to Opposer's First Request of Applicant for Production of Documents and Things as follows.

(A) Each of these General Objections applies to each of Applicant's responses. To the extent that specific objections are also set forth in response to a particular discovery request, the specific objections are not to be construed as a waiver of any General Objection.

(C) Applicant objects to each discovery request to the extent it calls for documents, things, or information that constitute or contain Applicant's trade secrets or other confidential, proprietary, or commercially sensitive information. Applicant will produce/provide such

documents, things, or information (to the extent otherwise discoverable) upon entry by the Board of a suitable protective order.

(D) Applicant objects to Opposer's "Instructions" and "Definitions" to the extent they attempt to impose on Applicant obligations that are greater than, different from, or inconsistent with Applicant's obligations under the Federal Rules of Civil Procedure, the Trademark Rules of Practice, or decisional law.

(E) A response stating that Applicant will produce/provide responsive documents, things, or information is not a representation that any responsive document, thing, or information necessarily exists.

(F) Applicant objects to Opposer's discovery requests to the extent they request documents or information that are not relevant to the subject matter of this proceeding, that are overly broad, vague, ambiguous, or that impose an undue burden on Applicant.

(G) To the extent Applicant states that it will produce/provide responsive documents, things, or information, it will produce/provide such documents, things, or information as they exist and can be located after a reasonable search of documents, things, and information within Applicant's possession, custody, or control.

(H) Applicant's inadvertent disclosure or production of documents, things, or information protected by the attorney-client privilege, the work product immunity doctrine, or any other applicable privilege or doctrine is not intended to be and shall not be construed to be a waiver of the privilege or doctrine.

(I) Applicant's responses are based on Applicant's present knowledge, belief, and investigation to date. Applicant reserves the right to modify or supplement its responses.

## **REQUESTS**

1. All documents and things identified in response to Opposer's First Set of Interrogatories to Applicant.

### **RESPONSE TO NO. 1:**

Subject to the General Objections set forth above and to each objection set forth in Applicant's interrogatory responses that identify documents and things, Applicant will produce documents and things responsive to this Request.

2. All documents and things relating to how Applicant promoted, promotes, or will promote, offered for sale, offers for sale, or will offer for sale, any goods associated with the 911 Hz Tone (including the 911 Hz Tone Products).

### **RESPONSE TO NO. 2:**

Subject to the General Objections set forth above, Applicant will produce documents and things responsive to this Request.

3. All documents that evidence how Applicant used, uses, and will use the 911 Hz Tone in any way (including advertising, labels, packaging, displays, and promotion).

### **RESPONSE TO NO. 3:**

Subject to the General Objections set forth above, Applicant will produce documents responsive to this Request.

4. All surveys conducted by Applicant regarding the 911 Hz Tone.

### **RESPONSE TO NO. 4:**

Subject to the General Objections set forth above, none.



5. All surveys conducted by Applicant regarding the 911 Hz Tone Products.

**RESPONSE TO NO. 5:**

Subject to the General Objections set forth above, none.

6. All licenses, franchise agreements, correspondence relating to enforcement, and settlement agreements regarding the 911 Hz Tone.

**RESPONSE TO NO. 6:**

Subject to the General Objections set forth above, none.

7. All licenses, franchise agreements, and settlement agreements regarding either the 911 Hz Tone Products.

**RESPONSE TO NO. 7:**

Subject to the General Objections set forth above, none.

8. All documents concerning Opposer and the 911 Hz Tone.

**RESPONSE TO NO. 8:**

Subject to the General Objections set forth above, Applicant will produce documents responsive to this Request.

9. All documents concerning or referring to Application Serial No. 78/235,618.

**RESPONSE TO NO. 9:**

Subject to the General Objections set forth above, Applicant will produce documents responsive to this Request.

10. All documents concerning any opinions, written or oral, as to the registrability, validity, use, enforceability, or infringement of the 911 Hz Tone, including all documents used or considered in the preparation and formulation of any such opinions.

**RESPONSE TO NO. 10:**

Subject to the General Objections set forth above, none.

11. All documents describing Applicant's policies and procedures regarding the destruction or retention of documents.

**RESPONSE TO NO. 11:**

Subject to the General Objections set forth above, Applicant will produce documents responsive to this Request.

12. All documents or things upon which Applicant intends to rely upon in this proceeding.

**RESPONSE TO NO. 12:**


In addition to the General Objections set forth above, Applicant objects to this Request as being premature.

13. A representative sample of each product identified in response to Interrogatory No. 12 of Opposer's First Set of Interrogatories to Applicant.

**RESPONSE TO NO. 13:**

Subject to the General Objections set forth above, Applicant will produce one or more products responsive to this Request.

Dated: April 12, 2005

  
\_\_\_\_\_  
John T. Gabrielides  
Elisa M. Valenzona  
BRINKS HOFER GILSON & LIONE  
455 N. Cityfront Plaza Drive, Suite 3600  
Chicago, Illinois 60611-5599  
Telephone: (312) 321-4200  
Facsimile: (312) 321-4299

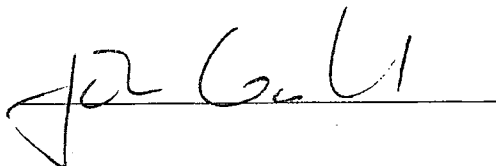
Attorneys for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST OF APPLICANT FOR PRODUCTION OF DOCUMENTS AND THINGS was served on counsel for Opposer on April 12, 2005, by sending same via First Class Mail, postage prepaid, and email to:

Michael H. Jacobs  
Crowell & Moring LLP  
1001 Pennsylvania, Avenue, N.W.  
Washington D.C. 20004

mjacobs@crowell.com

A handwritten signature in black ink, appearing to read "Michael H. Jacobs", is written over a horizontal line.

**Opposer's Exhibit 11**

A STUDY OF THE "CHIRP" SOUND

CONDUCTED FOR  
BRINKS HOFER GILSON & LIONE

SEPTEMBER 2005

**RL ASSOCIATES**

---

601 EWING STREET SUITE A-11  
PRINCETON, NEW JERSEY 08540  
(609) 683-9200  
(609) 683-0855 FAX

MOT 004675

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

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MOT 004676

## 1 - INTRODUCTION

### Background

Motorola, Inc. ("Motorola") manufactures and sells a wide variety of communications equipment, including, but not limited to, two-way radios. We have been informed that Motorola's two-way radios are commonly used by a wide variety of public safety personnel, such as police officers, fire fighters, ski patrollers, and emergency medical technicians (EMTs). We understand that to avoid having people speak over one another, the radio has a built-in feature that signals when one person has finished speaking. Specifically, the radios signal a speaker is finished by emitting a "chirp" sound. On page 2 of Motorola's Answer to Notice of Opposition, this chirp sound is described as an "electronic sound consisting of a tone at 911 Hz played at a cadence of 25 milliseconds (ms) on, 25 ms off, 25 ms on, 25 ms off, 50 ms on."

### Goal of the Study

In the spring of 2003, Motorola filed an application for registration of the chirp sound. The application was subsequently opposed by Nextel Communications, Inc. ("Nextel"). We understand that Nextel opposed the registration because they claim the chirp sound is not inherently distinctive, nor has it acquired distinctiveness. In partial response to Nextel's concerns, Brinks Hofer Gilson & Lione, (counsel for Motorola) commissioned RL Associates to design and carry out a fair and unbiased test of whether the chirp sound has or has not acquired source indicating distinctiveness (secondary meaning). As we understand it, for sounds (or similar sensory stimuli such as smells) source indicating distinctiveness has two components<sup>1</sup>

- The sound is distinctive in that members of an appropriate public have come to recognize it as indicating (associated with) a particular event.
- It is source indicating, in that, when used to indicate a particular event, members of the appropriate public recognize it as being indicative of a single, albeit possibly anonymous source.

To test whether the chirp sound has in fact acquired source indicating distinctiveness, we designed and carried out a survey of members of the appropriate public of public safety personnel. This is a report on the results of that study.

<sup>1</sup> In this case we think it valuable to distinguish between these two components of source indicating distinctiveness, so in this report we will use that term rather than the more common term secondary meaning.

MOT 004677



## II – METHODOLOGY

### Introduction

Before beginning our discussion of the specific methodology used in this survey, we think it is important to note that the methodology used in any survey research project involves some degree of compromise between conflicting objectives. For instance, on the one hand, there is a desire to completely control the survey process, and on the other hand, a desire to replicate actual market conditions. It is therefore important to keep in mind throughout our discussion of methodology that, of necessity, the procedures used incorporated such compromises.

### General Approach

The primary objective in this case is to determine whether a sound has acquired source indicating distinctiveness among those people who routinely use the equipment that make the sound. Thus, it was obviously necessary to design a study in which respondents were able to hear the sound at issue. Theoretically, one could present the sound to respondents either in person or over the telephone. While a telephone approach is lower cost, in order to present the sound in as clear a way as possible we decided to interview respondents in person.

To a substantial degree, the sound at issue is employed in a piece of equipment (two-way radios) whose use is concentrated in a limited segment of the population, primarily, people who work in one aspect or another of public safety. By far the most cost-effective way to reach a random sample of such individuals is at the respondent's workplace. Such interviews are a common way of doing such surveys, and are generally accepted in the field as valid survey methodology.

### Universe and Sample

There are two issues related to drawing an appropriate sample:

1. Defining the proper universe from which to draw the sample.
2. Assuring the sample is drawn in such a way as to be representative of this universe.

Universe – In surveys designed for use in Lanham Act litigation, it is generally accepted that an appropriate universe consists of people who are likely to be actual or potential users of the

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product at issue. Since the product at issue in this case is a two-way radio used primarily by people in the field of public safety, we defined the appropriate universe for this study as police officers, fire fighters, and emergency medical technicians (EMTs).

**Sample Frame** – The methodology used in this study was in-person interviews conducted with police officers, fire fighters, and EMTs at their workplace. The interviewing firms we selected to conduct the interviews were geographically distributed throughout the United States.<sup>2</sup>

**Sample Selection** – The interviewers were instructed to use their local phone book to call police, fire, and EMT stations in their area. Interviews were done either at the workplace of the respondent or in the interviewing firm's offices. They were told to attempt to conduct interviews with 14 different workplaces. At the workplace, as long as each interview was conducted in private (i.e. with only the respondent able to hear the interview), interviewers were permitted to conduct up to two interviews per workplace. If respondents were asked to come to the interviewing firm's office, they were to interview no more than two respondents per workplace.

**Honoraria** – Both because offering respondents a small honoraria increases the response rate (and thus improves the reliability of the survey), and because we believe that there is an emerging understanding that there is an ethical responsibility to pay willing respondents for their time, respondents were offered \$25.00, either as a donation to their local Police Benevolent Board or their station, or as a cash payment to themselves.

---

<sup>2</sup> Interviews were conducted in each of the nine census regions except the East South Central region (KY, TN, AL, and MS).

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### Study Design

#### a) Introduction – The Need for “Controls”

As is true in virtually every perception survey, the design of this survey has to take into account potential sources of error. One type of error is artifacts arising from the survey procedure itself. This type of potential source of error is commonly referred to as “noise”. The most common, although not the only, source of “noise” is that rather than admit they don’t have an answer to a question, at least some respondents will “guess” in their desire to get the “right answer.” Because no matter how well designed a survey it is generally impossible to guarantee that such noise has been eradicated, there is a general need to provide a mechanism to estimate the noise. In the great majority of cases, this mechanism(s) is the use of one form or another of controls.

#### b) The Controls Used

Aside from the chirp, respondents were presented with three other “control” sounds. The controls were chosen in such a way that we believed that the three control sounds would reflect three of the possible alternatives (single source identifying, event but not source identifying, neither event nor source identifying), and so provide a variety of useful estimates of the underlying tendency of respondents to guess (i.e. of the noise).

##### a) The chime sound played at startup of a computer running the Windows operating system.

In designing the survey, we believed that a majority of people would be able to identify this sound, and would think it comes from one company (and in particular Microsoft).

##### b) A doorbell – In designing the survey, we believed that a majority of people would be able to identify this sound, but would think that it comes from more than one company.

##### c) A paper cutter cutting paper – In designing the survey, we believed that a majority of people would not be able to identify this sound.

It is clearly desirable for respondents to hear the sounds in a consistent, controlled manner. To accomplish this, a high quality CD or cassette containing the four sounds described above was produced in a recording studio. To limit any possible order bias, the sounds were presented in two sequences – half the respondents heard the sounds in the sequence: Windows, doorbell, paper cutter, chirp, the other half heard the sequence: doorbell, chirp, paper cutter, Windows.

MOT 004680

Questionnaire

Once the respondent was alone with the interviewer, they were told:

*I am going to have you listen to a few recorded sounds.  
You will then be asked some questions.*

The interviewer then started the CD player. With the exception of probe questions and two demographic questions at the end of the questionnaire, the questions and sounds were recorded on the CD. This was done to ensure that everyone clearly heard the same set of instructions. Interviewers were instructed to follow along with the script, pausing the CD when told to do so, and recording the respondent's answers in the appropriate spaces.

The recording began with the following instructions:

*You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.*

Each sound was then identified by a number and played three times, and the recording then continued:

*Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound. This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.*

The interviewer pressed pause and recorded the respondent's answer in the space provided. The interviewer was instructed to probe once with, "Is there anything else?" If the respondent identified the sound, but did not mention the name of a specific company in his or her answer, the interviewer asked a follow-up question:

*You said that sound comes from a [ANSWER FROM PREVIOUS QUESTION]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?*

The interviewer then resumed the CD and the same procedure was repeated for three other sounds. The interviewer then completed the interview by asking two demographic questions:

*Finally, what is your job title?  
Is your position paid or volunteer? (Not asked of Police)*

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At the conclusion of the interview, respondents were asked to complete a brief honorarium form specifying the charity they wanted their \$25 honorarium donated to, or acknowledging that they received \$25. A complete copy of the questionnaire used in this study is included in Appendix A.

### Interviewing

Courts have consistently held that surveys conducted for use in litigation require that the interviewing be done by professional interviewers who are shielded from the client sponsoring the work, from the purpose of the study, and even from the fact that the study is being conducted for litigation. That is, the interviewing procedures must be "double blind." For this reason, in this study the interviewers and their supervisors were never told for whom the study was being conducted, nor that it was being conducted for litigation purposes. Furthermore, we believe that in this study the interviewer instructions and, more importantly, the test procedures themselves are transparent, in the sense that an independent observer could not tell who had commissioned the survey.

A total of 180 interviews<sup>3</sup> were conducted by 8 interviewing firms. Each firm was instructed to conduct one to two interviews at each of 14 different stations. The name and location of each interviewing firm, and the number of interviews conducted by that firm, appears below:

- 13 Quick Test/Discovery NQN in Natick, MA (Ballot numbers starting "1")
- 27 Northeast Data in West Nyack, NY (2)
- 28 Quick Test/Discovery NQN in Olympia Fields, IL (3)
- 10 Helen Nelson Market Research in Rosemount, MN (4)
- 28 Quick Test/Discovery NQN in Atlanta, GA (5)
- 25 Quick Test in Houston, TX (6)

<sup>3</sup> Sixteen interviews conducted in Atlanta, GA by Kimberly Dunn are not included in the results presented in the next chapter of this report. Based on a careful review of her work, we believe that at least some of her interviews were not conducted correctly, if at all. For one thing, the answers in two of her interviews (Ballot numbers 5-113 and 5-114) are exactly the same. In both interviews the four sounds are identified as follows: Computer program - Windows; Doorbell; Door closing - Heavy door scrubbing; Cell phone - Nextel. More important, when a member of the RL Associates professional staff attempted to validate these two interviews, in one case she was told the respondent did not work at that station, and in the other case the number was disconnected. We attempted to validate the remaining 14 of Kimberly's interviews. We were told that there was no such person at 6 of the numbers we tried, and one number was for a fax machine. For these reasons, we decided to exclude all of the work done by Kimberly Dunn. We believe that, if anything, discarding the interviews was conservative from the point of view of Motorola (that is, these interviews would have been slightly beneficial to Motorola). Copies of the 16 interviews conducted by Kimberly Dunn are included in Appendix C.

MOT 004682

25 C & C Market Research in Westminster, CO (7)  
24 Consumer Pulse in Redondo Beach, CA (8)

All interviews were conducted in August and September 2005 by professional interviewers employed by firms that we consider reliable and trustworthy. Aside from their general training and experience as interviewers, each interviewer was provided with a copy of written instructions, which specifically instructed them in the proper procedures for this study. A copy of the instructions is included in Appendix B.

#### Validation

In order to ensure that the interviewing was carried out as reported, two members of the RL Associates professional staff independently read all of the interviews. This practice allows us to look for patterns in the questionnaires conducted by a particular interviewer (e.g., repetition of an unusual phrase) that indicate that the questionnaires were not completed correctly, or were simply made up by the interviewer.

---

A second source of validation is the honorarium sheet the respondent was asked to complete at the end of the interview.

In addition, at least 20% of each interviewer's work (other than Kimberly Dunn's) is currently being formally validated by AVC Research, an independent interviewing service located in Belvidere, New Jersey. The purpose of this formal validation is to determine whether the respondent recalled participating in the interview, not to verify a respondent's answers to any particular question. As of this date, it is our opinion that all interviews were carried out according to our instructions.

MOT 004683

### III - DATA AND DISCUSSION

This survey was designed to provide information as to whether or not:

- The sound is distinctive in that members of an appropriate public have come to recognize it as indicating (associated with) a particular event.
- It is source indicating, in that when used to indicate a particular event, members of the appropriate public recognize it as being indicative of a single, albeit possibly anonymous source.

The results of the 164 interviews are shown in three tables. Table I shows the results relevant to the first issue tested - whether each sound is recognizable as indicating a particular event. The results show figures for the four different sounds each respondent heard:

TABLE I

*Please tell me what it is and what, if anything, you know about this sound.*

	<u>Chirp</u>	<u>Paper Cutter</u>	<u>Doorbell</u>	<u>Windows Start-up</u>
Radio	21	0	0	0
Walkie-talkie	27	0	0	0
Radio and walkie-talkie	4	0	0	0
Telephone	13	0	0	4
Paper Cutter	0	21	0	0
Doorbell	0	0	96	0
Computer	3	1	0	87
Any Other	25	67	3	7
Don't Know	7	12	1	2

#### ALL FIGURES ARE PERCENT OF 164 INTERVIEWS

The 28% (3+25) who said either computer or some other product or service in response to the "chirp" sound clearly indicate some guessing was going on with respect to this sound. However, the fact that not one individual mentioned either radio or walkie-talkie with respect to any of the other sounds shows that those respondents who said either radio or walkie-talkie with respect to the "chirp" sound were not guessing. While there was significant mention of "telephone", and some people may have been referring to the walkie-talkie feature of a telephone, this is not clear in the responses. Therefore, to be conservative (from Motorola's point of view), we did not count telephone answers as indicating a radio/walkie-talkie device. We conclude that net of noise 52% (21+27+4) recognize the "chirp" sound as that made by a radio and/or walkie-talkie.

MOT 004684

Table II shows the results relevant to the second issue tested – whether each sound is identified with a specific source, or if not whether it is identified with one company or more than one company. As in Table I, the results are shown for the four different sounds.

TABLE II

*Please tell me what it is and what, if anything, you know about this sound.  
Are you thinking of one company or more than one company?*

	Chirp	Paper Cutter	Doorbell	Windows Start-up
Motorola only	14	0	0	0
Nextel only	29	0	0	0
Motorola and Nextel	9	0	0	0
Motorola and/or Nextel total	52	0	0	0
Microsoft/Windows	0	1	0	66
Any other specific single source	10	13	11	13
Unknown single source	2	1	3	2
Any specified multiple sources	5	4	2	3
Unknown multiple sources	5	13	20	3
Don't know number of sources	19	56	63	10
Don't know what sound is	7	12	1	2

ALL FIGURES ARE PERCENT OF 164 INTERVIEWS

The 22% (10+2+5+5) who either gave a non-Motorola/Nextel source or multiple sources in response to the "chirp" sound clearly indicate some guessing was going on. However, (and this is roughly true for each of the four sounds) the 12% (10+2) who said single source (other than Motorola or Nextel) just about balanced the 10% (5+5) who said multiple sources. Moreover, no respondent said Motorola and/or Nextel for any of the other sounds. We conclude that all of the guessing with regard to the specific source of the "chirp" sound is reflected in the respondents who gave a non-Motorola/Nextel single source – in other words, those respondents who said Motorola and/or Nextel with respect to the "chirp" sound were not guessing. We conclude that net of noise 52% (14+29+9) associate the "chirp" sound with Motorola and/or Nextel.

MOT 004685



The tables on the previous two pages show the proportions of people who met each of the two components of source indicating distinctiveness. Table III shows the proportion of people who gave answers that met both of the two criteria.

TABLE III

Motorola only and radio only	7%
Motorola only walkie-talkie only	3
Motorola only and radio and/or walkie-talkie	11
Nextel only and walkie-talkie only	20
Nextel only and radio only	3
Nextel only and radio and/or walkie-talkie	24
Motorola and Nextel - radio and/or walkie-talkie	7
Motorola and/or Nextel - radio and/or walkie-talkie	42

As discussed on the previous two pages, because respondents were only counted who were not guessing either with respect to the event (i.e. radio and/or walkie-talkie) or with respect to the source (Motorola and/or Nextel) these results are essentially "net of noise". Thus the data shows that approximately 42% of the relevant population recognize the "chirp" sound as that made by a Motorola and/or Nextel radio and/or walkie-talkie.

MOT 004686

## IV - PERSONNEL AND REMUNERATION

Michael Rappeport was responsible for all aspects of this survey. Dr. Rappeport's resume, including cases and publications, is attached as Appendix D.

RL Associates is being compensated \$65,400 for this survey. Dr. Rappeport's hourly compensation rate for time spent subsequent to this report is \$500/hour.

*Michael Rappeport Sept 14, 2005*  
Michael Rappeport

MOT 004687

APPENDIX A  
QUESTIONNAIRE

MOT 004688

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

**RL ASSOCIATES  
SOUND STUDY - RG682  
SCREEN SHEET**

INTERVIEW DATE: \_\_\_\_\_  
START TIME: \_\_\_\_\_  
END TIME: \_\_\_\_\_

INTRODUCTION: Hello, this is \_\_\_\_\_ from \_\_\_\_\_. We're conducting a brief survey among various professionals. I want to emphasize that we are not selling anything, and we will not ask any questions about your work.

Our survey takes less than 10 minutes to complete. The survey involves listening to something on a cd, so it must be conducted in person, either at your station, or our office, whichever is most convenient for you. We will donate \$25 to your...

IF POLICE, SAY: local PBA for your participation in this study.

IF FIRE/EMT, SAY: station for your participation in this study.

IF THE PERSON IS NOT AVAILABLE NOW, DETERMINE A TIME TO CALL BACK.  
**RESULT IF CANNOT CONTINUE NOW:**

- ( ) Agreed to participate - Date and time of appointment: \_\_\_\_\_
- ( ) Call back to arrange appointment: \_\_\_\_\_
- ( ) Refused to participate - Terminate and tally

INTERVIEWER INDICATE: 1 POLICE      2 FIRE      3 EMT

RESPONDENT NAME: \_\_\_\_\_

STATION ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

STATION PHONE NUMBER: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**MOT 004689**

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN **BOLD PRINT**.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

**SOUND #1**

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

- 2 -

**VOICE:** This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

**SOUND #2**

**VOICE:** Please press pause now.

**INTERVIEWER:** PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

**INTERVIEWER:** PRESS PAUSE TO RESUME CD/TAPE

**MOT 004691**

**VOICE:** This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

**SOUND #3**

**VOICE:** Please press pause now.

**INTERVIEWER:** PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

**INTERVIEWER:** PRESS PAUSE TO RESUME CD/TAPE

**MOT 004692**

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT. ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME) \_\_\_\_\_

verify that I conducted this interview on (date) \_\_\_\_/\_\_\_\_/\_\_\_\_ at (time) \_\_\_\_:\_\_\_\_.

INTERVIEWER SIGNATURE: \_\_\_\_\_

MOT 004693



APPENDIX B

MEMO TO SUPERVISORS AND INTERVIEWER INSTRUCTIONS

MOT 004694

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

## RL ASSOCIATES

---

601 EWING STREET SUITE A-11  
PRINCETON, NEW JERSEY 08540  
(609) 683-9200  
(609) 683-0855 FAX

### SOUND STUDY - RG682 MEMO TO SUPERVISORS

PLEASE CALL ME AFTER YOU HAVE CAREFULLY REVIEWED THESE INSTRUCTIONS. I WOULD LIKE TO TALK TO YOU BEFORE YOU START THIS JOB.

The respondents for this study are police officers, fire fighters, and emergency medical technicians (EMTs). You are going to have to pre-recruit the respondents, using your local phone book. This is an in-person interview. It can be conducted either at the respondent's station, or at your interviewing facility, whatever is most convenient for you and the respondent. We would like you to conduct at least one interview at 14 different stations (or -- if you are conducting the interviews at your facility -- with people from 14 different stations). You may conduct up to 2 interviews per station, so, you should end up conducting between 14 and 28 interviews in all.

We are offering to make a \$25 donation to the police officer's Police Benevolent Association (PBA) or the fire fighter's/EMT's station for their participation in this study.

The study involves playing a CD (or cassette) that has four sounds on it, and finding out what, if anything, the respondent knows about those sounds. Most of the instructions to the respondent have been recorded on the CD, so the interviewer just has to follow along with what is written on the questionnaire. During the interview, the interviewer's primary responsibilities include:

- Starting and stopping the CD/tape at the appropriate time
- Writing down the respondent's answers
- Asking the probe question, Is there anything else?
- Asking a follow-up question that is specified on the questionnaire
- Asking two questions at the end of the survey
- Having the respondent fill out the honorarium sheet

If possible, we ask that a MINIMUM OF TWO interviewers work on this project.

Each interviewer is to have his or her own set of interviewer instructions.

**\* Before conducting any interviews, ALL interviewers working on this study must read and sign a copy of the interviewer instructions. The signed interviewer instructions must be returned to RL Associates at the end of the study. Work will not be accepted from interviewers who did not sign the interviewer instructions prior to conducting interviews.**

We ask that you carefully review the questionnaire and the interviewer instructions with the interviewers before they start interviewing. It is essential that all interviews be conducted completely and correctly.

MOT 004695

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

MEMO TO SUPERVISORS – PAGE 2

The Screen Sheet can be filled out in pencil, but the rest of the questionnaire should be completed in black or blue PEN. We do not want the interviewer to erase or "white out" ANYTHING that he or she writes. If the respondent changes his or her mind, the change should be recorded verbatim. If the interviewer makes a mistake, he or she should cross out the mistake, and put their initials by the change.

Please be sure the interviewer fills in ALL of the information that is asked for at the end of the questionnaire. We are going to look at this information to verify that the interviews were done correctly. Interviewers are to print their full name, enter the date and time the interview was conducted, and sign the bottom of the interview.

Do not edit the questionnaires. We want to see the questionnaires exactly as the interviewer records them and submits them to you. This is why it is crucial that the interviewer carefully follow the instructions.

We WILL NOT PAY for work that is incomplete, incorrectly completed, or unreadable. If you or the interviewers have ANY questions about this study, please call me!

Please ship the completed study back to our office as soon as it is complete.

- We would like you to fax us the first two interviews you do as soon as they are completed.
- We would like you to send us all of your completed interviews on Friday, September 9 so that we receive them on Monday, September 12. If you are not going to be able to meet this deadline, please let us know.

As soon as you have finished the study, please return all of the materials, including:

Completed questionnaires  
Signed interviewer instructions  
Signed honoraria sheets  
CD and cassette

You can ship the study back to us in one of two ways:

- a) UPS NEXT DAY AIR – Our UPS shipping number is
- b) FEDERAL EXPRESS P1 – Our Federal Express account number is

If you have any questions or concerns, please call me. Thank you very much.

MOT 004696

# RL ASSOCIATES

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601 EWING STREET SUITE A-11  
PRINCETON, NEW JERSEY 08540  
(609) 683-9200  
(609) 683-0855 FAX

## SOUND STUDY - RG682 INTERVIEWER INSTRUCTIONS

PLEASE TAKE THE TIME TO CAREFULLY REVIEW THESE INSTRUCTIONS.

**\* Before conducting any interviews, you must read AND SIGN a copy of the interviewer instructions (see the bottom of Page 2 of these instructions). It is essential that the interviews be conducted COMPLETELY and CORRECTLY. If you have any questions, please ask your supervisor.**

### The Respondents

The respondents for this study are police officers, fire fighters, and emergency medical technicians (EMTs) that have been pre-recruited to participate in this study.

### The Questionnaire

This study involves playing a CD (or cassette) that has four sounds on it, and finding out what, if anything, the respondent knows about those sounds. Most of the instructions to the respondent have been recorded on the CD, so you just have to follow along with what is written on the questionnaire. During the interview, your primary responsibilities include:

- Starting and stopping the CD/tape at the appropriate time
- Writing down the respondent's answers
- Asking the probe question, Is there anything else?
- Asking a follow-up question that is specified on the questionnaire (see note below)
- Asking two questions at the end of the survey
- Having the respondent fill out the honorarium sheet

### **\* The Follow-Up Question**

After the respondents hear each sound, they are asked what it is and what, if anything, they know about it. If the respondent identifies the sound, but does not mention the name of a specific company in their answer, be sure to ask the follow-up question:

You said that sound comes from a [ANSWER GIVEN]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

For instance, if the respondent says the sound is a boiling tea kettle, the follow up question should be:

You said that sound comes from boiling tea kettle. Are you thinking of one company who makes that tea kettle or more than one company who makes that tea kettle?

IT IS IMPORTANT TO NOTE THAT THERE ARE NO "RIGHT" ANSWERS. WHAT WE ARE INTERESTED IN IS WHAT THE RESPONDENT THINKS. TO US, WHATEVER THE RESPONDENT SAYS IS "RIGHT."

MOT 004697

INTERVIEWER INSTRUCTIONS - PAGE 2

The Screen Sheet can be filled out in pencil, but the rest of the questionnaire should be completed in **black or blue PEN**. We do not want you to erase or "white out" ANYTHING that you write. If the respondent changes his or her mind, record the change verbatim. If you make a mistake, cross out the mistake, and put your initials by the change.

Please be sure to carefully fill in ALL of the information that is asked for at the end of the questionnaire. We are going to look at this information to verify that the interviews were done correctly. You must print your full name, enter the date and time the interview was conducted, and sign your full name.

If you have ANY questions about any aspect of this study, please ask your supervisor!

---

\* \* \* SIGN AND RETURN AT THE END OF THE STUDY \* \* \*

I \_\_\_\_\_ have read the above interviewer instructions on \_\_\_\_\_ (date)

at \_\_\_\_\_ (time). INTERVIEWER SIGNATURE:

MOT 004698

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

APPENDIX C

INTERVIEWS CONDUCTED BY KIMBERLY DUNN

MOT 004699

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Computer program*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Doorbell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004701



VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Door Closing*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Heavy door scrubbing*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004702

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

2-4

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Cell Phone

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Norstel

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/16/05 at (time) 1:30.

INTERVIEWER SIGNATURE

Kimberly C. Dunn

MOT 004703

- 1 -

5-114

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Computer Program

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Windows

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-114

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door bell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004705

-3-

5-114

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Door Closing*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Heavy door scrubbing*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004706

-4-

5-114

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

2-4

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Cell phone*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Nextel*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

☒ paid or

☐ volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/7/08* (time) *1:30* :

INTERVIEWER SIGNATURE

*Kimberly C. Dunn*

MOT 004707

- 1 -

5-115

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The computer program windows.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-115

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004709



-3-

5-115

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*The old roller stamp*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004710

-4-

5-115

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

3-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Nextel, radar, signal for a call.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Nextel - Motorola*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/7/05* at (time) *8:45*

INTERVIEWER SIGNATURE:

*Kimberly C Dunn*

MOT 004711

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The Computer opening up a new  
application*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Standard door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004713

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Un not sure*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004714

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Oh yeah, the Motorola.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Our radio.

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Office

IF FIRE/EMT, ASK:

Is your position...

1 paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 6:30

INTERVIEWER SIGNATURE:

Kimberly Dunn

MOT 004715

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Elevator down town the fancy ones  
when you get to your floor.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*I don't know that*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

5-117

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*A door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Un sure*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004717



VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Not a clue*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004718

5-117

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Our radios*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*McArela*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/16/05* at (time) *3:30*.

INTERVIEWER SIGNATURE:

*Kimberly C. Dunn*

MOT 004719

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Micro soft windows*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

5-118

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Doorbell

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

All of them every body makes that Keau

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004721

5-118

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004722

5-118

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4.

VOICE: Please press pause now.

1-1

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Motorolas the company the radios  
that we use.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

fireman

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly C. Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 1:15.

INTERVIEWER SIGNATURE Kimberly C. Dunn

MOT 004723

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

Windows

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004724

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*The door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*NOT sure*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004725



5-119

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*The old credit card machine  
things*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Don't have a clue*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004726

5-119

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-6

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Motorolas low battery*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/6/05* at (time) *2:20*

INTERVIEWER SIGNATURE

*Kimberly C. Dunn*

MOT 004727

- 1 -

5-120

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Opening an app. on the Computer*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Blume Chat windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Sep 12 05 10:08a

P. 6

- 2 -

5-120

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Dear beef

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

N/A

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004729

Confidential - Attorneys' Eyes Only -  
Subject to Protective Order in TTAB  
Opp. No. 91/161,817

Sep 12 05, 10:14a

-3-

5-120

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004730

Sep 12 05 10:08a

P.7

- 4 -

5-120

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

3-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Our Radar's on the nextel*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*born by Motorola*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT. ASK:

Is your position...

- 1 paid or
- 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/7/05* at (time) *7:20*.

INTERVIEWER SIGNATURE:

*Kimberly Dunn*

MOT 004731

- 1 -

5-121

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Computer start up*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004732

-2-

5-121

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Mohar detector at the store  
or one of those regular door bells*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*No I don't know its probably  
the door bell but I don't know who  
did make it*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004733



-3-

5-121

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Hand copy machine with the  
2 or three copies*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Couldn't tell you!*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004734

-4-

5-121

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

8-6

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

The radio going dead or the cell phone

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Volunteer fireman

IF FIRE/EMT, ASK:

Is your position...

1 paid or

2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date)

9/7/05 at (time) 3:45

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004735

- 1 -

5-122

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Computer prompt*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004736

- 2 -

5-122

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Any one its a regular doorbell*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004737

-3-

5-122

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*I dont know*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004738

- 4 -

5-122

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

8-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Radio battery*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*I don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

*officer*

IF FIRE/EMT. ASK:

Is your position...

*1* paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Dunn*

verify that I conducted this interview on (date) *9/7/25* at (time) \_\_\_\_\_:

INTERVIEWER SIGNATURE:

*Kimberly C. Dunn*

MOT 004739

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The sound when you log onto  
the computer.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Simple dark bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*I can't think of one I'm sure  
quite a few people use this kind.*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004741



5-123

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*Hand computer.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Just the little hand calculator*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004742

5-123

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

8-1

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Dead battery in the radio ..

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Fire fighter

IF FIRE/EMT, ASK:

Is your position...

- 1 paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/16/05 at (time) 12:25.

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004743

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Computer*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*I'm not sure probably Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

5-124

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Door bell.*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Not sure*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004745

5-124

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Dont Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004746

5-124

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Call Radio.

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

M. Airda.

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

officer

IF FIRE/EMT, ASK:

Is your position...

- ☒ 1 paid or  
☐ 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 3:50

INTERVIEWER SIGNATURE:

Kimberly C. Dunn

MOT 004747

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The computer music*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Am not sure.*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door beep

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Don't know

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004749



5-125

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Dont Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004750

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

CB our Radio signal

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Motorola

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT. ASK:

Is your position...

- 1 paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/6/05 at (time) 6:40.

INTERVIEWER SIGNATURE

Kimberly Dunn

MOT 004751

- 1 -

5-126

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The Computer start up sounds*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

- 2 -

5-126

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004753

-3-

5-126

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

Don't Know

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004754

-4-

5-126

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

This ones the ball & chain the radio  
call when you have a call

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Mobda

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT. ASK:

Is your position...

- 1 paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

Kimberly Dunn

verify that I conducted this interview on (date) 9/17/05 at (time) \_\_\_\_\_.

INTERVIEWER SIGNATURE:

Kimberly Dunn

MOT 004755

- 1 -

5-127

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*The microsoft; window tones*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Windows*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

-2-

5-127

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

*Door bell*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*Have not got a clue!*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004757



- 3 -

5-127

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*am not sure sounds like some kind  
of lever going back and forth*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*definitely don't know*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004758

- 4 -

5-127

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

2-6

VOICE: Please press pause now.

~~Done~~

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

Nextel chirp

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

Nextel

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

Officer

IF FIRE/EMT. ASK:

Is your position...

☒ paid or  
2 volunteer?

I (INTERVIEWER PRINT FULL NAME) Kimberly Dunn

verify that I conducted this interview on (date) 9/17/05 at (time) 6:

INTERVIEWER SIGNATURE: Kimberly C. Dunn

MOT 004759

- 1 -

5-128

TAKE THE RESPONDENT SOMEWHERE PRIVATE TO BE INTERVIEWED. SEAT THE RESPONDENT. SAY: I am going to have you listen to a few recorded sounds. You will then be asked some questions.

INTERVIEWER: BEGIN THE CD/TAPE PLAYER. DO NOT READ THE FOLLOWING SCRIPT, JUST FOLLOW ALONG WITH IT. WHEN THE VOICE TELLS YOU TO PAUSE THE CD/TAPE, PLEASE DO SO AND RECORD THE RESPONDENT'S ANSWER IN THE SPACE PROVIDED. THE SCRIPT IS IN BOLD PRINT.

VOICE: You are going to hear four sounds one after another. You will hear each sound three times. After you have heard all four sounds, you will then hear each sound individually, and I will ask if you can identify the sound.

VOICE: This is Sound Number 1 (Sound x 3)

VOICE: This is Sound Number 2 (Sound x 3)

VOICE: This is Sound Number 3 (Sound x 3)

VOICE: This is Sound Number 4 (Sound x 3)

VOICE: Now you will hear each of the sounds again. After you hear each sound there will be an opportunity for you to tell the interviewer what, if anything, you know about the sound.

VOICE: This is the first sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #1 HERE. PROBE ONCE WITH: Is there anything else?

*Micic Soft*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

- 2 -

5-128

VOICE: This is the second sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #2

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #2 HERE. PROBE ONCE WITH: Is there anything else?

Door keel

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004761

Sep-12 05 10:07a

P. 3

-3-

5-128

VOICE: This is the third sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #3

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #3 HERE. PROBE ONCE WITH: Is there anything else?

*I'm not sure it sounds like a Marney  
Copier*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

*No I'm not sure what it is*

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

MOT 004762

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5-128

VOICE: This is the fourth sound. If you happen to know what this sound is, please tell me what it is and what, if anything, you know about it. Please be as specific as possible. If you don't happen to know what the sound is, it is okay to say so.

SOUND #4

1-1

VOICE: Please press pause now.

INTERVIEWER: PRESS PAUSE AND RECORD VERBATIM WHAT THE RESPONDENT SAYS ABOUT SOUND #4 HERE. PROBE ONCE WITH: Is there anything else?

*Motorda Radio*

IF THE RESPONDENT IDENTIFIES THE SOUND, BUT DOES NOT MENTION A SPECIFIC COMPANY IN HIS OR HER ANSWER, ASK:

You said that sound comes from a [ANSWER FROM ABOVE]. Are you thinking of one company who makes that [ANSWER] or more than one company who makes that [ANSWER]?

INTERVIEWER: PRESS PAUSE TO RESUME CD/TAPE

Finally, what is your job title?

IF FIRE/EMT, ASK:

Is your position...

☒ paid or

☐ 2 volunteer?

I (INTERVIEWER PRINT FULL NAME)

*Kimberly Brown*

verify that I conducted this interview on (date) *9/8/05* at (time) *3:30*.

MOT 004763

INTERVIEWER SIGNATURE:

*Kimberly Brown*

APPENDIX D  
RESUME OF MICHAEL RAPPEPORT

MOT 004764

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DR. MICHAEL RAPPEPORT

Dr. Rappeport has worked in market and survey research areas for more than 35 years, the last 27 as a partner of R L Associates. As part of his function he has made more than 200 appearances as an expert witness in legal cases at trial and/or through deposition. His testimony has dealt with statistics and statistical analysis, marketing, and public opinion in cases in such disparate areas as trademark infringement, libel, damages for failure to fulfill a contract, and reapportionment. He has also testified as an expert in a number of quasi-legal proceedings before a range of public boards, agencies and regulatory bodies.

Education

B.S. Physics, RPI, Troy, New York 1957

M.S. Electrical Engineering, Yale University, New Haven 1958

PH.D. Statistics, New York University, 1968

Professional positions

1975 - present: Founding partner, R L Associates, survey research and consulting firm

Dr. Rappeport has had wide experience both in the direction of all kinds of surveys of human populations and as a consultant in statistical, strategy planning and survey research areas. Two areas in which he has been particularly active are studies on public policy, and studies for use in litigation. Along with responsibility for the management of the firm, Dr. Rappeport has direct responsibility for all statistical aspects of the firm's work. In the main this encompasses sample design and the use of a wide variety of statistical analysis techniques. He has designed projectable national and regional probability samples of all civilian non-institutional telephone households, and a very wide range of specialized samples of all types.

1969 - 1972: 1973 - 1975: Vice president and chief statistician, Opinion Research Corporation, Princeton, New Jersey

1972 - 1973: Vice president, Response Analysis Corp. Princeton, New Jersey

1959 - 1969: Supervisor, Bell Telephone Laboratories, Holmdel, New Jersey

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Teaching

At various times, Dr. Rappeport has taught or conducted guest lectures in a number of colleges and universities. He has been an adjunct instructor in both Research Methods and Political Public Opinion at Rutgers University, and taught a course in Marketing at Rider College.

Articles and Speeches

Over the course of the last 25 years, Dr. Rappeport has written approximately 40 published articles, and given more than 70 speeches. He has spoken at a number of meetings of legal organizations including:

Faculty member - ABA-ALI seminar on Dilution - February 2004

Participation in a 2003 panel of the Amer. Intellectual Property Law Assoc.

Participation in a 2001 panel of the Advanced Practitioners Prog of the Intl. Trademark Assoc.

A 1998 speech to the Bar for the Federal Circuit

Witness at a mock trial at the Feb. 1998 Meeting - American Bar Association Antitrust Section

A 1996 speech to the New Jersey Intellectual Property chapter of the Inns of Court.

A 1995 panel presentation for the CLE program, American Bar Assoc. - Antitrust Section.

A 1995 speech to the CLE program, American Bar Assoc. - Intellectual Property Section

Witness at a mock trial at the 1995 meeting of the American Intellectual Property Law Assoc.

Among the wide cross-section of other types of organizations where he has spoken at an annual or other major meeting are Planned Parenthood Federation of America, United States Trademark Association, Travel and Tourism Research Association, Newspaper Research Council, Pennsylvania Hospital Association, and New Jersey Political Science Association.

Other

Dr. Rappeport is currently listed in Who's Who in the East, and several other similar publications dealing with the Legal Profession, Social Sciences and Marketing. He has served on a variety of civic and professional boards. Among those most directly related to his professional activities:

Editorial Board of the "Trademark Reporter" 1993 - 1996, 1997 - 2004

Board of Advisors - Citizens Committee on Bio-Medical Ethics 1986 - 1994

New Jersey State Bio-Ethics Task Force on Public and Professional Education - 1989- 1992

Board of Directors, American Association for Public Opinion Research, 1976 - 1980; Standards

Chairman 1979 - 1980

MOT 004766

Cases in which Michael Rapoport has appeared either by deposition or in trial as an expert witness 2001-2005. Date shown is first appearance. Unless noted all cases listed were in United States District Courts.

2005

June Deposition - The City of New York v. Albert Elovitz - Southern District New York  
April Deposition and August Trial - Dosatron Intl v Agri-Pro - Middle District Florida  
April Testimony Deposition - Franklin Loufrani v Wal-Mart Stores - Trademark Trial and Appeal Board  
March Deposition - In the Matter of Certain Ink Markers - U.S. International Trade Commission  
March Deposition - Mylan v Procter & Gamble - Southern District New York  
Feb. and June Depositions - Toyota Motor Sales v Aliments Lexus - Eastern District New York

2004

August Trial - Catamount v Microsoft - District of Vermont  
Feb. Deposition - Weight Watchers v Luiginos - Southern Dis NY  
Feb. Trial - Tretco v HDS New England - Dis. of Massachusetts

2003

Dec. Deposition - Georgia Pacific v Procter & Gamble - No. Dis. of Georgia  
Dec. Deposition and Feb 2004 Trial - Tretco v HDS New England - Dis. of Massachusetts  
Sept. Deposition - Winn v. Eaton - Central Dis. of California  
Aug. Deposition - In the matter of certain Agricultural Vehicles - Intl. Trademark Commission  
Feb. Deposition - Microsoft v Lindows.com - West. Dis. Of Washington  
Jan. Deposition and Feb. Trial - Pharmacia v GlaxoSmithKline II - District of New Jersey  
Jan. Trial - Ardex v Chemrex - Western District Of Pennsylvania  
Jan Deposition and Feb. Trial - Inliten v Santa's Best - Southern District Ohio

2002

Dec Deposition - Pharmacia v GlaxoSmithKline - District of New Jersey  
Nov. Deposition - Maui v Del Monte - Central District California  
Oct. Deposition and Nov. Trial - Spotless v A&E - E.D.N.Y.  
Sept. Deposition - Twentieth Century Fox v Marvel Enterprises, Tribune Entertainment - SDNY  
July Deposition - Philips Oral Healthcare v Salton - Western District of Washington  
June Deposition and July Trial - Scotts v United Industries - So. District Florida  
June Deposition - Eurotech v Cosmos European Travel - E. D. Virginia  
April Testimony and December rebuttal Deposition - QVC v Weick Family Inc. - TTAB  
April Deposition - Astra Zeneca v Ferndale - Eastern District Michigan  
Feb. Deposition and August 2004 trial - Catamount v Microsoft - District of Vermont  
February Trial - Koala Corp v Prince Lionheart - District of Colorado  
February Trial - Morelli v Tiffany - Eastern District of Pennsylvania

2001

November Deposition - J&J Snackfoods v Earthgrains - District of New Jersey  
November Deposition - Nissan Motors v Nissan Computer - Central District of California  
November Trial Affidavit - ABC (Ford West) v Autonation - Central District of California  
October Deposition - Qwest Communications v Worldquest Networks - Eastern. District of Virginia  
October Deposition and February 2002 Trial - National Distillers v Refreshment Brands - SDNY  
July Deposition and Nov. Testimony - Sara Lee v Kayser-Roth - Trademark Trial & Appeal Board  
May Trial - SBCH v J&J Merck - Southern District of New York  
February Deposition - Isenbeck v Beck - Southern District of New York  
January Deposition - Caché v M.Z. Berger - Southern District of New York

MOT 004767

List of publications of Michael Rappeport 1992-2005

The Democratic Ethos and the Positive Sum Society – Society – July-August 2003

A Rejoinder to a Critique – The Trademark Reporter; November-December 2002

Litigation Surveys – Social Science as Evidence – The Trademark Reporter; July-August 2002

Applying Daubert; National Law Journal, January 21, 2002

When Consumer Beliefs are Based on a Court's Intuition - One More Issue Arising From  
Conopco (with Sandra Kornstein-Cohen); The Trademark Reporter; March-April 1997

Is Judaism Splitting Into Two religions; Sh'ma; April 1996

The Role of the Survey "Expert" - A Response to Judge Posner; The Trademark Reporter, March-  
April 1995

The Future of the American Jewish Community; Sh'ma; December 1994

The Patient Self Determination Act; Implementation of the Law in Nursing Homes; (co-author);  
Paper presented at the 122nd Annual Meeting of the American Public Health Association  
November, 1994

Condition Critical; (co-author); Paper presented at the 1994 Annual Meeting of the American  
Society of Law, Medicine and Ethics; October 1994

Statistically Based Evidence; National Law Journal, Op-ed Page; August 1993

Prognosis Good for Lower Medical Care Inflation; Wall Street Journal Op-Ed page;  
February, 1993

Predicting the Election - Why Clinton Will Win; The Sunday Record (Bergen County, New  
Jersey); August 1992. In addition Dr. Rappeport was a columnist on a weekly basis for the  
Bergen Record throughout much of 1991. Columns dealt with a wide range of statistical and  
public opinion issues from crime in New Jersey to the proper reporting of retail sales.

MOT 004768

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